

UST POLICY COMMISSION MEETING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Phoenix, Arizona

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9:11 a.m.

UST POLICY COMMISSION

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<p style="text-align: right;">Page 2</p> <p>1 THE MEETING OF THE UST POLICY COMMISSION held 2 on May 28, 2003, at 9:11 a.m., at 1110 West Washington, 3 Conference Room 250, Phoenix, Arizona, in the presence 4 of: 5 6 Michael O'Hara, Chairman 7 Harold Gill, Vice Chairman 8 Roger Beal 9 Gail Clement 10 Andrea Martincic 11 Shannon Davis 12 Myron Smith 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>10 ABSENT MEMBERS: 11 Leandra Lewis 12 Theresa Foster 13 George Tsiolis</p>	<p style="text-align: right;">Page 4</p> <p>1 get through it. 2 The second order of business is the approval of 3 the minutes from March and April of 2003. Did everyone 4 receive copies and have had an opportunity to review 5 those? Okay. Any corrections? Amendments? 6 Hal, do you want to make a motion? 7 MR. GILL: I'll make a motion that we 8 approve the minutes from March, which include the special 9 meeting for ratification of the February's meeting 10 minutes and then the regular meeting minutes of -- both 11 on March 26th, and then the minutes for April. 12 MS. DAVIS: Second. 13 MR. SMITH: I'll second it. 14 CHAIRMAN O'HARA: All those in favor of 15 approving the minutes for both March and April, please 16 say aye. Any opposed? Motion passes. Minutes are 17 approved. 18 Moving on to Item Number 3, ADEQ updates. 19 We'll begin with an SAF monthly report from Judy 20 Navarrete. 21 MS. NAVARRETE: Good morning. Did everyone 22 receive these in your packets? 23 MS. DAVIS: Under the first tab. 24 MS. NAVARRETE: Last month we made 149 25 interim determinations, and also you should have received</p>
<p style="text-align: right;">Page 3</p> <p>1 Phoenix, Arizona 2 May 28, 2003 3 9:11 a.m. 4 5 PROCEEDINGS 6 7 CHAIRMAN O'HARA: Thank you. I'd like to 8 call this meeting to order and welcome everyone to the 9 May meeting of the UST Policy Commission. I'd like to 10 start on my left with the roll call. 11 MR. SMITH: Myron Smith. 12 MS. MARTINCIC: Andrea Martincic. 13 MS. HUDDLESTON: Tamara Huddleston. 14 MS. DAVIS: Shannon Davis. 15 CHAIRMAN O'HARA: Michael O'Hara. 16 MR. GILL: Hal Gill. 17 MR. BEAL: Roger Beal. 18 MS. CLEMENT: Gail Clement. 19 CHAIRMAN O'HARA: Thank you. I did receive 20 e-mails from George Tsiolis and Theresa Foster that they 21 couldn't be in attendance today. 22 Also, I'd like to note before we get started 23 that if everyone has got a public comment, I would 24 appreciate if they could fill out a speaker slip and 25 bring that up front. We've got a very lengthy agenda today, and hopefully we can keep our comments concise and</p>	<p style="text-align: right;">Page 5</p> <p>1 the detailed report of where all the applications are at, 2 and then on the informal appeals for the months of 3 December, January and February, how many informal appeals 4 we received and how many formal appeals we've received. 5 And also I wanted to let anyone that is a TAP member know 6 that the form to request payment for sitting on the -- 7 through a hearing is on the web, on the SAF website under 8 forms. 9 CHAIRMAN O'HARA: Judy, do you have a count 10 now or maybe it's on the data of current backlogs, it 11 looks like we're really working it off. 12 MS. NAVARRETE: Uh-huh. Everything 13 in-house is 696. 14 MR. GILL: Judy, is there -- and I think 15 this is great. It looks like you guys are -- all of you 16 guys are doing a great job. Remember in the past my 17 concern was always how many of these are coming in the 18 back door, and I know from what we tried to do -- or back 19 in the door, what we tried to do in the past was try to 20 figure out what -- what appeals, informal appeals and 21 formal appeals were continuing, you keep seeing the 22 continuous ones, and we were just having a really 23 difficult time trying to devise a way to figure out which 24 determinations kept coming back. And that's my only 25 concern is that when you look at the informal appeals,</p>

<p style="text-align: right;">Page 6</p> <p>1 even though it's a minimal number compared to the 600, 2 46, 56, 60 to 70 technical and cost informal appeals, is 3 there any way that you can think of to identify 4 continuing determinations that are coming back as 5 informal appeals? Because I know we had problems trying 6 to figure out how to track it and how to determine which 7 determinations just kept coming back, but I think that 8 would be real productive if we could figure that out so 9 we could identify which ones are indeed continuing to 10 come back as determinations. 11 MS. NAVARRETE: You mean the 17 that turn 12 into formal appeals? 13 MR. GILL: No. I would say all the 14 informal appeals. Is there any way to identify -- 15 MS. NAVARRETE: It's either an informal 16 appeal and then there's a decision and it goes -- and if 17 they don't like the decision, it goes to formal. It 18 doesn't come back into informal. 19 MR. GILL: No. When you send out a 20 determination, there's 46 cost and 18 technical that are 21 coming back as informal appeals, and I'm just wondering, 22 is there any way to determine when they come back which 23 ones are recurring. In other words, how many of the 24 determinations do you keep seeing coming back as informal 25 appeals, which issues?</p>	<p style="text-align: right;">Page 8</p> <p>1 remember we had all kinds of questions when we went 2 through it. I'll try to meet with you separately to see 3 if we can -- because it doesn't really help the 4 owner/operators and the consultants to see a code that 5 can mean a number of different things. We really want to 6 know what is the actual issue. Is it the groundwater 7 sampling that was the issue here or is it the backup for 8 an activity that's the issue because they typically come 9 back as a code, which could mean a number of different 10 things and we really need to identify the actual issue. 11 MS. NAVARRETE: I spelled that out in a 12 different report to you. 13 CHAIRMAN O'HARA: I think we also -- wasn't 14 it part of the solution last month that we talked about 15 having this training seminar, which is under Section 3(g) 16 that you were going to describe what the common items 17 were that we were seeing, kind of communicate with 18 stakeholders. Is that -- would that still be the 19 solution? 20 MR. GILL: That would be fine. 21 CHAIRMAN O'HARA: We'll get an update on 22 that on Item G. 23 Any more questions for Judy on the SAF monthly 24 updates? Great. Thank you, Judy. 25 Item B is the UST corrective action workload,</p>
<p style="text-align: right;">Page 7</p> <p>1 MS. NAVARRETE: I don't understand your 2 question, Hal. 3 MR. GILL: Okay. When we get a 4 determination and just -- and deny groundwater sampling, 5 and I have no idea if that's -- you know, for whatever 6 reasons. The owner/operator appeals that, and that's an 7 informal appeal. How many times is that -- and it could 8 be any issue. That's what I'm saying. Is there any way 9 to identify which one of these determinations are always 10 coming back? 11 MS. NAVARRETE: We did identify that in the 12 top five appeal issues. 13 MR. GILL: But that really wasn't -- 14 MS. NAVARRETE: You want -- then you're not 15 asking me the top five appeal issues. You're asking for 16 certain -- 17 MR. GILL: Actual issues. Because the top 18 five appeals, the way they come back, are 4910 whatever, 19 and that's typically meaningless, or this report wasn't 20 filled out right. 21 MS. NAVARRETE: No. I gave you a readout 22 of the top five appeal issues, and then the denial codes, 23 but -- not this month but last month, and I can send that 24 to you again, if you'd like. 25 MR. GILL: Well, no. I have that. But</p>	<p style="text-align: right;">Page 9</p> <p>1 and Phil McNeely is going to make a brief presentation. 2 MR. McNEELY: Yeah. In your packet, you 3 can look at -- it's a new format, UST corrective action 4 production report. I'm Phil McNeely, for the record. 5 If you look at it, we sort of -- last Policy 6 Commission meeting, you guys wanted to have a total 7 universal site so what we have -- we've got the new 8 format. If you pull out the form, you see like on the 9 closure request, we have the total received in April, 10 which is eight, the total reviewed but not approved, two; 11 review and approved. So there was eight approved closure 12 requests in April. The total submitted to date but not 13 reviewed, that's 14. So that's actually our backlog of 14 closure requests that have not been reviewed ever, 14, 15 and then total submitted today and not approved. So 16 we've reviewed 21 to date that have not been approved. 17 So -- and this is going to be a running total because I 18 think what you guys wanted to know was the cycle, you 19 know, that never-ending loop, is that the way you guys 20 put it, of denials. So if you go through this whole 21 list, we have it for CAPs, SCRs. Then we have all the 22 appeals. 23 If you add it all up, we received 15 reports 24 this month in April. One thing you can see is we don't 25 really have that many appeals going on right now.</p>

<p style="text-align: right;">Page 10</p> <p>1 It's -- informal appeals received. We received two 2 closure requests and one SCR appeal. There's a total of 3 seven in process. Then formal appeals, zero for -- in 4 April and there's four in the process. 5 And then if you flip the page, we have all the 6 backup, because I think -- what I was hoping you guys 7 would do, if the consultants or anybody or the 8 owner/operators have a site that hasn't been reviewed or 9 a report that's not been reviewed, if it's not on our 10 list here, then we don't know about it and you just need 11 to call us and tell us. So here's a list of all the 12 reports. And we've given you -- take the first one, for 13 example, LUST closure status report. Received column, 14 that's when we received it. The due date is -- on 15 closure, actually we have by statute 120 days but our 16 Sunset measure is we do those within 60 days, so our due 17 date in that column is 60 days. The next column is when 18 we responded, and there's three response types. One is a 19 disapproval, one's approval and one is a notice of 20 deficiency. And you can go through the SCRs the same 21 way, and even though the SCR -- the due date is 120 days 22 out because that's our statute time frame. CAPs are the 23 same thing, the due date is 120 days out. 24 And the last thing is the risk assessment 25 status report. You've been asking us for that. There's</p>	<p style="text-align: right;">Page 12</p> <p>1 MR. McNEELY: Yeah. And we can look at 2 that. I love these graphs so we can probably get that 3 for the next Commission. 4 MR. BINGHAM: And we're actually planning 5 on being on the chart this time. 6 CHAIRMAN OHARA: Any other comments or 7 questions for Phil? Great. Thank you, Phil. It's very 8 helpful. 9 Moving on to Item 3(c), SAF payments to 10 insurance companies. I believe Bob Rocha has a short 11 presentation. Is Bob here? 12 MS. DAVIS: Bob, if I could just have a 13 second. In your packets, behind the data that Ian is 14 going to put together that Phil just reported on is a 15 technical training plan, and I wanted to -- it's not on 16 the agenda. So don't want to take up a lot of time with 17 it, but basically we have laid out both with the 18 corrective action side and the financial side, as you can 19 see, the hiring of a mentor, the peer review, the 20 training to ensure more consistency to get to some of the 21 questions that were raised earlier. So that was just 22 included your packet today behind statistics. Thank you. 23 CHAIRMAN OHARA: Mr. Rocha. 24 MR. ROCHA: Mr. Chairman, this item on the 25 agenda kind of caught me by surprise. I don't really</p>
<p style="text-align: right;">Page 11</p> <p>1 22 of them on here, and we haven't received any. We 2 don't have the due date on there, but we're committed -- 3 in the new corrective action rules, you have risk 4 assessments can be submitted with an SCR. They can be 5 submitted with a CAP. They can be submitted with a 6 closure request. So we already have those time frames. 7 They can also be submitted as a stand-alone document, and 8 we're committed to get those out within 120 days even 9 though it's not in statute. So the plan is by this 10 summer, we're trying to get rid of this backlog, all the 11 new risk assessments that come in we will be cycling 12 those out within 120 days or 60 days of closure requests. 13 Any questions? 14 CHAIRMAN OHARA: Good report. 15 MR. SMITH: I have a question. On the LUST 16 open, do we have a count for January, February and March 17 of this year and how are we trending to last year, up or 18 down? 19 MR. McNEELY: Joe, have you looked at that 20 or Ian. 21 MR. BINGHAM: We haven't. There's been a 22 steady decline in LUST reporting. I think last year we 23 reported a total of about 135. 24 MR. SMITH: So that was about 12 a month or 25 averages out. So below that?</p>	<p style="text-align: right;">Page 13</p> <p>1 know what is intended or what was desired by the 2 Commission. 3 CHAIRMAN OHARA: At the last meeting, this 4 is the issue that I think was a subject of a hearing that 5 was decided that the law, which states that the Fund 6 cannot pay to insurance companies, was upheld, and I 7 believe the last meeting, Shannon, you might have taken 8 down some comments. You asked -- people wanted 9 clarification on that law and how it was going to be 10 implemented, and I think these were the four items that 11 she had written down, based my review of the minutes. 12 MS. DAVIS: Mr. Chairman, if I may, a 13 couple of things in talking about this is that -- this is 14 the issue that we talked about yesterday on the phone -- 15 is that the implementation of the law -- first of all, 16 it's not retroactive on C(4). The issue that this 17 raises, I think, is really the viability of the -- not 18 the viability, but how this Commission wants to see SAF 19 accessed, and now that it's clear that owners and 20 operators must go to their insurance companies first, I 21 think it raises a whole bunch of issues, and those issues 22 are going to be some of these that are written down here, 23 the impact on the owner/operators current insurance. One 24 of the issues that has come through is what if insurance 25 companies, now knowing that they're clearly the first</p>

<p style="text-align: right;">Page 14</p> <p>1 point of contact for reimbursement, are they going to 2 cancel on people. 3 So it raises -- and if all -- depending upon 4 the answers, I think the Policy Commission has a lot 5 of -- has some homework to do and has some 6 recommendations to give, and I think that one of the 7 things that the Commission needs to think about is what 8 are the recommendations that it wants to forward, either 9 to the director or to the legislature, based on the 10 insurance issue. Do you want to save them for the 11 directors, stakeholder process that's going to happen 12 once the legislature gets out? Do you want to take these 13 to a financial subcommittee and vet all the questions and 14 get some of the answers, but some of these things that 15 happen, I think staff needs more clear direction of the 16 research. I don't want to put staff in a position of 17 making policy decisions about this issue. 18 The insurance, I think people understand that 19 the agency is going to want the insurance companies to be 20 able to pay their claims and to have owners and operators 21 make claims on their insurance, and then based on the 22 effect of that, what does the Policy Commission want to 23 see done? What are their recommendations? So to me, 24 this is truly a policy issue and not necessarily 25 something that staff is going to go research and come</p>	<p style="text-align: right;">Page 16</p> <p>1 owner/operators to show they've met those standards. 2 MS. DAVIS: In terms of -- 3 MS. MARTINCIC: Well, in other words, what 4 do they have to do in order to meet the requirements, the 5 new requirements, that they've gone to the insurance? Is 6 it enough that they have a letter sent to their insurance 7 company that -- I guess -- 8 MS. DAVIS: So proof of insurance? 9 MS. MARTINCIC: Yeah. Because I'm not 10 clear on what the Department's process is now for this in 11 order to make, you know, a recommendation that's 12 meaningful one way or the other. I need to better 13 understand how the Department is going to handle this 14 now. 15 MS. DAVIS: So like administratively? 16 MS. MARTINCIC: Yeah. And I think that's 17 what the question was on 4(c). I think, too, you're 18 right is a policy issue in terms of insurance and how 19 that's going to affect people's policies, and I mean, I'd 20 like to hear from some of the insurers on that, but like 21 four, I need to know kind of what the process will be. 22 MS. DAVIS: Mr. Chairman, if I may, Bob and 23 Judy, do you want to speak to the administrative parts of 24 it at this meeting? 25 MS. NAVARRETE: I would rather do a little</p>
<p style="text-align: right;">Page 15</p> <p>1 back to. 2 CHAIRMAN O'HARA: Well, I agree with -- I 3 think we're going to take this issue up, particularly 4 with regards to the phase-out discussion. I guess before 5 we can make recommendations, it seems to me we need to 6 know how the law is being implemented so that we can -- 7 if it's implemented in a way that the Commission feels is 8 appropriate, then there's no need to make a 9 recommendation. It seems to me -- I think the law 10 already is being implemented. We've heard some testimony 11 from people in the audience that we're getting letters 12 from self-insurers saying they had to exhaust their 13 insurance, and so I guess what the Commission needs to 14 know is what is the effect of that law and how is it 15 being implemented today because I'm sure there's cases 16 you have right now that you're making decisions on. 17 MS. MARTINCIC: I would just echo what Mike 18 is saying. I appreciate -- I think that's great that the 19 Department is willing to hear the UST Policy Commission's 20 recommendations on it, but yeah, I would need to know 21 sort of what the Department is asking from 22 owner/operators to sort of show that certification that 23 they've gone to their insurance companies, because it's 24 my understanding that that's not been decided really yet 25 from the Department's standpoint on what's required of</p>	<p style="text-align: right;">Page 17</p> <p>1 presentation on it next month because I didn't know 2 that's what you wanted, and we can lay out the process. 3 CHAIRMAN O'HARA: And how it's going to be 4 implemented going forward since that decision -- 5 MS. NAVARRETE: Right. 6 CHAIRMAN O'HARA: -- in regards to 7 particularly self-insured and then owner/operators who 8 don't have insurance or that they got denied. 9 MR. ROCHA: Again, that's what we would 10 rather do, but the points have been made, what we've been 11 asking as far as the insurance. The letter is a letter 12 of denial on coverage and why, and whether retroactive, 13 Shannon just answered that before, was no, we are not 14 going to do retroactive. 15 MS. MARTINCIC: Is the Department receiving 16 adequate, you know, information on the part of 17 owner/operators on this issue? I mean, have you gotten 18 what you're looking with any particular -- 19 MS. NAVARRETE: Everybody is putting forth 20 their best effort. The only problem that we've had so 21 far is with the insurance companies. They are stalling 22 on issuing denial letters and citing where in the policy 23 they can deny that claim. They just want -- they just 24 want it to go on forever and never have to deny it. 25 MS. MARTINCIC: Right. And so that catches</p>

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1 the owner/operator in a predicament. So I guess I would
 2 ask, then, what's the Department planning on doing in
 3 that situation?
 4 MS. NAVARRETE: For the most part, on most
 5 of them, we have received denial letters.
 6 MS. MARTINCIC: From the insurance
 7 companies?
 8 MS. NAVARRETE: Yes.
 9 MS. MARTINCIC: Is it one particular
 10 insurance company that you're receiving letters from
 11 versus -- or are they multiple insurance companies?
 12 MS. NAVARRETE: The biggest insurers are
 13 AIG and Federated.
 14 MS. MARTINCIC: And you're getting letters
 15 from both of those?
 16 MS. NAVARRETE: We have received letters.
 17 MS. CLEMENT: Gail Clement, for the record.
 18 Is there -- when you talk about retroactivity, does that
 19 mean that for all UST releases that have been reported or
 20 in process this does not apply to or does that mean for
 21 those payments that have been made, this does not apply
 22 to? Could you define that for me?
 23 MR. ROCHA: Rather than get into a lot of
 24 discussion, why don't we bring back the presentation.
 25 I'd be more than glad to clarify because a lot of those,

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1 and it would seem pretty clear, and these were asked at
 2 the last meeting. So let's do it again so they know
 3 exactly what they're going to be presenting on.
 4 CHAIRMAN O'HARA: Well, I think -- it's my
 5 understanding you're going to make more or less a
 6 comprehensive presentation on the law and how it's going
 7 to be implemented including these issues and maybe
 8 others, be prepared to answer questions.
 9 Anything else you want to see, the Commission
 10 members want to see as part of that presentation
 11 specifically?
 12 MS. CLEMENT: Is there any way we can get
 13 any information from the insurance companies directly?
 14 MS. MARTINCIC: I saw next month it looked
 15 like there was a presentation.
 16 CHAIRMAN O'HARA: We do have an item on the
 17 agenda for the next meeting, Item Number 10, and one of
 18 our Commission members proposed that we have AIG come
 19 make a presentation. It was specifically regarding
 20 privatization of programs, because I understand AIG has
 21 taken over some SAF programs in other states and they
 22 represent on that, but at the same time, I think we ought
 23 to include the issue of how insurance is going to be
 24 treated under a law like this. I'll certainly try to get
 25 them in here next meeting.

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1 on the retroactive issue, it's a question that basically
 2 we need to continue to talk with our director and
 3 continue to decide other elements that apply to the
 4 retroactive issue.
 5 MS. CLEMENT: Is the answer, then, that you
 6 have not made a decision on that or is the answer that
 7 you haven't defined retroactivity? Because I would, if
 8 you wouldn't mind, like a little bit of an answer today,
 9 if possible, if you have an answer.
 10 MR. ROCHA: The answer is basically we
 11 haven't clearly defined it yet.
 12 MS. CLEMENT: Thank you.
 13 MS. DAVIS: Mr. Chairman, Gail, I just also
 14 want to clarify that we have defined retroactivity very
 15 clearly in the claims that have already been processed
 16 and paid. They will not be going back for reimbursement.
 17 That's clearly been defined.
 18 MS. CLEMENT: Then there is a gray area
 19 potentially between that point --
 20 MS. DAVIS: Claims in the process.
 21 MS. CLEMENT: Thank you very much.
 22 MS. DAVIS: You're welcome.
 23 CHAIRMAN O'HARA: Any other comments? Hal.
 24 MR. GILL: I think we need to identify once
 25 again what we want because we had four questions here,

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1 MS. CLEMENT: Thank you.
 2 CHAIRMAN O'HARA: Roger.
 3 MR. BEAL: Am I understanding that
 4 currently insurance companies that have been signed on as
 5 financial responsibility mechanisms are denying claims to
 6 pay the bills?
 7 CHAIRMAN O'HARA: Apparently they've got
 8 the denial letters, correct?
 9 MS. NAVARRETE: I didn't hear that
 10 question. So I don't want to say yes.
 11 MR. BEAL: I'm trying to find out, the
 12 insurance companies that have been signed on as financial
 13 responsibility mechanisms are denying the claims
 14 presented to them at this time?
 15 MS. NAVARRETE: They are denying the claims
 16 under -- and we're having them point out where in their
 17 policy the denial has come from.
 18 MR. BEAL: Are all insurance companies
 19 doing this or are some paying?
 20 MS. NAVARRETE: Some are paying.
 21 CHAIRMAN O'HARA: Okay. Any questions in
 22 the meantime specifically you might have, maybe call Bob
 23 or contact me and we can have them address that at the
 24 meeting.
 25 Okay. Any other comments, questions on

<p style="text-align: right;">Page 22</p> <p>1 insurance?</p> <p>2 I do have one public comment, Mr. Vannais.</p> <p>3 MR. VANNAIS: Good afternoon. My name is</p> <p>4 Leon Vannais. I have a question about the insurance</p> <p>5 issue. If a policy is about to run out and you know</p> <p>6 you're meeting your coverage limit, there's been</p> <p>7 questions coming up saying can we send a work plan that</p> <p>8 allows funds to be encumbered at the time when the extent</p> <p>9 of insurance coverage is depleted and SAF funding becomes</p> <p>10 available to maintain a continuous source of funding for</p> <p>11 those owner/operators, and I'm sure this has probably not</p> <p>12 been evaluated by the ADEQ at this point but is something</p> <p>13 that many owner/operators, I think on the outside, would</p> <p>14 like to have DEQ put together either an answer or a</p> <p>15 process for that too. In other words, I've got a</p> <p>16 remediation system running. My policy limit has been</p> <p>17 exceeded, but I want to keep that remediation system</p> <p>18 going. Can I submit a work plan to encumber funds for</p> <p>19 that eventuality?</p> <p>20 And the second point I guess I would like to</p> <p>21 make is that if there's a gray area by the insurance</p> <p>22 policies that have submitted claims or financial</p> <p>23 mechanism that had been in the process and if that is</p> <p>24 maintaining to be a gray area, there are a number of</p> <p>25 claims that have been denied because of the insurance</p>	<p style="text-align: right;">Page 24</p> <p>1 at?</p> <p>2 MR. VANNAIS: Yes.</p> <p>3 MR. PEARCE: I suggest that maybe next</p> <p>4 month or perhaps that kind of process could be included</p> <p>5 in the process issues that we're asking DEQ to elaborate</p> <p>6 on because I think that's a process that is discussed and</p> <p>7 it is being employed already in some claims.</p> <p>8 I just want to confirm something. This is</p> <p>9 critical and there's still a lot of confusion from a lot</p> <p>10 of the insurance companies, at least a couple of them, on</p> <p>11 this issue. Did I understand that the Department</p> <p>12 presently has no intention of going back and asking the</p> <p>13 insurance companies to disgorge amounts that have already</p> <p>14 been processed and paid to insurance companies?</p> <p>15 CHAIRMAN O'HARA: John, I think they wanted</p> <p>16 to --</p> <p>17 MR. PEARCE: Or is there some reservation</p> <p>18 on that? I'm not trying to pin you down, if you're not</p> <p>19 ready for that. I think I heard the Department say that</p> <p>20 they don't have the intention of going back and trying to</p> <p>21 collect from insurance companies.</p> <p>22 MS. DAVIS: Mr. Chairman, John, my</p> <p>23 understanding of the meeting with Director Owens is that</p> <p>24 the agency would not go back to pay -- to recover claims</p> <p>25 that have already been paid out. The gray area, which I</p>
<p style="text-align: right;">Page 23</p> <p>1 issue before this decision or this recognition of the</p> <p>2 statute was in effect. If that is still to be maintained</p> <p>3 as a gray area, the determinations have been issued, then</p> <p>4 the owner/operators regulated community has specific time</p> <p>5 frames in which to appeal this decision until that denial</p> <p>6 of that claim becomes final. I'm hoping the Policy</p> <p>7 Commission could recommend to ADEQ that those claims that</p> <p>8 have been denied for the insurance policy issue be put on</p> <p>9 hold to maintain the claim status in-house until that</p> <p>10 gray area is resolved. Therefore, we don't have to go</p> <p>11 through the informal/formal appeal. We can just maintain</p> <p>12 this until the decision is forthcoming from the</p> <p>13 Department as to what that gray area is. Thank you.</p> <p>14 CHAIRMAN O'HARA: One more comment on the</p> <p>15 issue. Mr. Pearce.</p> <p>16 MR. PEARCE: Thank you. Just to clarify, I</p> <p>17 agree with Mr. Vannais' last comment, and I believe that</p> <p>18 that is a process that's actually being employed on some</p> <p>19 applications now, correct me if I'm wrong, but I think</p> <p>20 that's what's happening on some applications that is</p> <p>21 within the box. If they retain their status as a claim,</p> <p>22 we don't gather priority points while the issue is</p> <p>23 resolved finally completely with all aspects or interest</p> <p>24 but they're not chopped off either. So they have to go</p> <p>25 back and start over again. Is that what you're driving</p>	<p style="text-align: right;">Page 25</p> <p>1 mentioned earlier, which is claims that are made against</p> <p>2 the SAF right now that are in process, there is the</p> <p>3 distinct possibility that those will be asked to go back</p> <p>4 to their insurance company. That's my prediction, how's</p> <p>5 that, but that's not the director. That's my prediction</p> <p>6 at this point.</p> <p>7 MR. PEARCE: Okay. Thank you. And then I</p> <p>8 disagree that -- I agree with other comments that as soon</p> <p>9 as we can get a process established for</p> <p>10 owner/operators -- as soon as the operators are aware of</p> <p>11 what it takes to ensure that their SAF claims are going</p> <p>12 to move forward in the process, the better, and what it</p> <p>13 takes -- what kind of response from an insurance company</p> <p>14 will be required to be able to show the Department I have</p> <p>15 tried to access insurance coverage. It's not</p> <p>16 forthcoming; therefore, please process my SAF claim.</p> <p>17 Number one, is it necessary to have a response to the</p> <p>18 insurance company at all? I'm kind of leaning towards</p> <p>19 yes, that should be required. Number two, does the</p> <p>20 response need to effectively deny coverage unequivocally</p> <p>21 or can the denial be conditioned, as they often are, or</p> <p>22 subject to a reservation of rights by the insurance</p> <p>23 company, as they often are.</p> <p>24 Those are the kinds of questions I think is</p> <p>25 critical for the owner/operator and the Department to</p>

<p style="text-align: right;">Page 26</p> <p>1 know how to treat these, because as we all know, 2 insurance companies don't always give no in a letter. 3 They like to say no, but this, this and this, and I just 4 don't know if that's going to force the whole process in 5 the claims. And I would hope the Department would 6 consider the impact on the ability of the owner/operator 7 to get the work done and get their claims paid. By 8 getting caught in the middle, as Andrea referred, to that 9 insurance, often engage in, and if nobody else is trying 10 to get coverage and hasn't received coverage from the 11 insurance company, and if no owner/operator is obligated 12 to reimburse the Department for any money the 13 owner/operator receives from the insurance company, 14 eventually then I'm hoping that that might be enough to 15 help move that claim forward. Thank you.</p> <p>16 CHAIRMAN O'HARA: Thank you, John. 17 Moving on to Item 3(d), status of the SAF rule 18 revision and the ADEQ rule writer. And I passed out for 19 everyone's benefit the recommendation that this 20 Commission made to Director Owens at the last meeting, 21 and I just -- I think we'll keep this as an ongoing item 22 maybe just to keep it alive and see what the status is. 23 Have we got a rule writer, A; and B, is there any thought 24 to scheduling a rewrite of the SAF rules? I think we all 25 understand the importance of that process, and maybe the</p>	<p style="text-align: right;">Page 28</p> <p>1 detail because it is a fairly complex issue. 2 Okay. A DEUR is a restrictive covenant, and it 3 runs with the property. It's placed on the deed of a 4 property, runs with the title and is recorded at the 5 county recorder's office. And the purpose of the DEUR is 6 to ensure that if there is an institutional or 7 engineering control that's utilized as part of a closure, 8 that those restrictions are maintained through time at 9 the property.</p> <p>10 The original DEUR provisions were established 11 three years ago during the 2000 legislative session. 12 We've been working with that set of statutes. During 13 this legislative session, there was some additional 14 modifications that were made in Senate Bill 1243. That 15 just got signed by the governor two weeks ago today, as a 16 matter of fact, and that was signed. It was an emergency 17 implementation, so those new provisions are effective 18 today.</p> <p>19 The DEUR tool is an option for site closure. 20 The agency doesn't have any authority to require somebody 21 to utilize this tool. So it's just an operation. And 22 it's applied any time. Again, any time an institutional 23 or engineering control is utilized at a property, it 24 triggers the use of a DEUR. So if somebody chooses those 25 options, then the DEUR requirement goes along with it.</p>
<p style="text-align: right;">Page 27</p> <p>1 insurance issue is another. It's a law, but I don't 2 think there's any rules that govern how it's 3 administered. So maybe we could include that, but any 4 comments? Any luck in getting a rule writer?</p> <p>5 MS. DAVIS: No. But the paperwork is out 6 on the risk assessor, if that counts.</p> <p>7 CHAIRMAN O'HARA: Okay. Any plans at this 8 time to restart the stakeholder meetings on the SAF 9 rules? Nothing yet? Okay. Any comments questions from 10 the Committee members?</p> <p>11 Moving on to Item 3(e), DEUR and RBCA process. 12 I believe Amanda Stone has a presentation.</p> <p>13 MS. STONE: Good morning. Thank you, 14 Mr. Chairman. Again, for the record, I'm Amanda Stone. 15 If you turn to the very last section in your 16 packet, I provided you a copy of the latest DEUR bill, 17 and I'm also going to hand out some copies of the slides 18 for you this morning. And for the audience, I made some 19 extra copies of the slides and they're available on the 20 back table there.</p> <p>21 I know there's a lot on this morning's agenda, 22 so I'm going to run through these slides fairly quickly, 23 and I've already talked to quite a few of you about the 24 DEUR issue. I'd be happy to come to a future meeting or 25 maybe a technical meeting to talk about this in more</p>	<p style="text-align: right;">Page 29</p> <p>1 The DEUR requirement can apply to any 2 remediation program at DEQ. It's not just USTs, but any 3 remediation program, and it doesn't create any new 4 standards. It's merely a tool for documenting a standard 5 or a control that's being utilized at a property.</p> <p>6 The property owner, and I know this is a big 7 issue for UST folks, the property owner is responsible 8 for recording the DEUR and also for maintaining the terms 9 of the DEUR. This does not preclude, for instance, if 10 there's an owner/operator that's a different person or 11 party than the property owner, the UST owner/operator can 12 conduct any maintenance activities on behalf of the 13 property owner. So that's real important. I know that's 14 a big issue for UST folks.</p> <p>15 The property owner is required to submit an 16 annual report. And again, this is something that another 17 party can do on behalf of the property owner, and we've 18 made this a real simple process, I think, that the annual 19 reports for the institutional controls, there's a form 20 available on our web page, you can download it. It's one 21 page. It's essentially a certification stating that the 22 terms of the DEUR are being maintained. So it's not -- 23 the annual report is not a very onerous requirement for 24 most of the UST sites.</p> <p>25 DEQ also has authority to inspect properties</p>

<p style="text-align: right;">Page 30</p> <p>1 where a DEUR has been placed to make sure that the DEUR 2 is being maintained, and also DEURs can be modified or 3 released with the Department approval. We haven't had 4 any released so far since the statute went into effect. 5 Okay. The new provisions that are under Senate 6 Bill 1243. I'm not going to talk about this too much 7 because I don't think it's really going to impact UST 8 sites, for the most part, but the biggest change in the 9 statute was financial assurance. The prior statute 10 required a one-time, up-front fee when an engineering 11 control is placed, and that was going to be a very, very, 12 very large and potentially cost-prohibitive fee. So now 13 in lieu of the one-time, large up-front fee, a property 14 owner can utilize financial assurance instead, and we're 15 going to be writing rules to implement that part of the 16 legislation. 17 1243 also provides a little bit more 18 prescriptive enforcement authority, some clarifying 19 changes to help us implement it and also requires a 20 seller of a property -- anybody who's selling a property 21 has to notify the agency of that sale so that we know who 22 the new property owner is and we can contact them about 23 their annual report requirement and things like that. 24 The DEUR fee. There's several fees that we 25 need to write rules on, and there's also the financial</p>	<p style="text-align: right;">Page 32</p> <p>1 complex issue. Basically, a DEUR is required any time 2 a -- any time a nonresidential standard is achieved or 3 any time either a Tier Two or Tier Three risk assessment 4 relies on some sort of human behavior to be maintained 5 through time. For instance, if a Tier Two evaluation 6 says that you won't dig below a certain depth, maybe 10 7 or 20 feet, that restriction, that human behavior has to 8 be documented and maintained through time. So that's the 9 type of circumstance that would require a DEUR. Also a 10 DEUR is required any time an engineering control is going 11 to be used. I don't think that's going to apply very 12 much at UST sites. 13 Again, we recognize, the agency recognizes that 14 this is a very complex issue and there is some gray area. 15 So we're going to be writing a policy with stakeholder 16 input on exactly when a DEUR is required and when it's 17 not required. We're going to be initiating that process 18 real soon, and certainly we'll be soliciting comments 19 from the Policy Commission on that. 20 And that's it. Does anybody have any 21 questions? 22 CHAIRMAN OHARA: Great. Thank you. 23 Any questions for Amanda? 24 Very good. Thank you, Amanda. 25 Moving on to Item 3(f). This was an issue that</p>
<p style="text-align: right;">Page 31</p> <p>1 assurance rule that we need to write. I don't want to 2 talk about all of that too much today because there's a 3 lot of moving pieces there, but I do want to talk about 4 the DEUR fee as it relates to institutional controls 5 because that's going to be what applies to most of the 6 UST sites. As a lot of you know, we've had the 7 stakeholder process. We have an interim DEUR rule that 8 is 95 percent done, I would say. Hopefully, we'll get 9 that into effect by the end of this fiscal year. And 10 that requires a one-time, up-front payment to the 11 Department. The current payment for 95 percent of the 12 institutional controls that you folks are doing on your 13 UST sites is going to be under \$5,000. Again, as I 14 already mentioned, we're going to be doing rules to 15 implement the new provisions and financial assurance and 16 engineering control provisions in the statute. 17 And then my last slide here, I think, is 18 probably what you might be most interested in. The DEUR 19 fee is SAF eligible. I've provided a copy -- the very 20 last page of this handout that I just gave to you is a 21 copy of a letter from Bob Rocha that talks about SAF 22 eligibility as it relates to the DEUR fee. Again, the 23 interim rule is almost final and this slide isn't 24 complete, but I missed a couple things on here. It says 25 required when? When is a DEUR required? This is a real</p>	<p style="text-align: right;">Page 33</p> <p>1 was brought forward last meeting by a member of the 2 public, and I believe at the time we asked Mr. Rocha to 3 just look into the payback to the State Assurance Fund of 4 a \$6 million appropriation to the RPTA and status of 5 maybe getting that back or possibly getting that back. 6 Bob, do you have any updates for us? 7 MR. ROCHA: For the record, Mr. Chairman, 8 my name is Bob Rocha. And again, in relation to this \$6 9 million loan, it requires that the lottery reach a 10 certain level of sales, and it has not reached that level 11 over a period of many years and the declining revenues of 12 the lottery, I do not anticipate those monies being 13 collected in the very near future as said by statute. So 14 that pretty much we're, I would say, stuck with a \$6 15 million receivable for a long period of time, and that's 16 about the extent of the report. 17 CHAIRMAN OHARA: Any questions? 18 MR. GILL: Which \$6 million is it? Is this 19 the long, long time ago or the one we took out in '03? 20 MR. ROCHA: No, no. The one a long, long 21 time ago. 22 MR. GILL: How about changing the statute? 23 MS. DAVIS: Have at it, Hal. 24 CHAIRMAN OHARA: Any other comments? 25 Questions?</p>

<p style="text-align: right;">Page 34</p> <p>1 Item G was an item that we brought up at the 2 last meeting, and ADEQ agreed to hold some SAF training 3 seminars possibly in the summer. Have we got any updates 4 on that, Judy? 5 MS. NAVARRETE: Yeah. Judy Navarrete, for 6 the record. Ron Kern is in charge of the UST Outreach 7 Program, and I'm meeting with him this afternoon to see 8 if we can set up some seminars and maybe we'll contact 9 Hal to see what he was asking for earlier and maybe we 10 can answer some of those questions. But I'm expecting to 11 do that within the near future, to have some seminars in 12 the near future. 13 CHAIRMAN O'HARA: Great. Keep us up to 14 date on that. Any comments or questions for Judy? 15 Moving on to Item 4. Has everyone received a 16 copy of the UST Policy Commission annual report? I know 17 we got it at the last meeting but there was exhibits 18 missing. Has everyone had an opportunity to receive that 19 and review it? 20 MS. CLEMENT: Mr. Chairman, since I was not 21 a member of the Commission yet last year, I'm not 22 particularly comfortable yeaying or naying, so I'll 23 probably abstain, but I just wanted for the record to 24 mention that. 25 CHAIRMAN O'HARA: Okay. Thank you. We</p>	<p style="text-align: right;">Page 36</p> <p>1 MR. GILL: Yeah. 2 CHAIRMAN O'HARA: Go ahead. 3 MR. GALENE: Mr. Chairman, my name is Paul 4 Galene. On the heels of the groundwater study, ASU would 5 like to process the use of select sites for use in 6 demonstrating remediation and feasibility technologies 7 that are kind of out there but not really familiar in the 8 consulting regulatory environment, and also to use select 9 sites to demonstrate more aggressive remediation 10 technologies that might help improve our knowledge as 11 regulators and consultants in approaching these 12 groundwater contaminated sites. Proposing it here maybe 13 to be forwarded -- we're ready to present to the 14 technical subcommittee. So it's more an issue of just 15 getting it on the agenda right at this point. 16 CHAIRMAN O'HARA: Great. So Hal, do I 17 understand that you wanted to look at this as a technical 18 subcommittee issue? 19 MR. GILL: Well, I don't know. I guess the 20 only reason to have it presented at the technical 21 subcommittee would be to condense it for presentation 22 here, but I mean -- 23 MR. GALENE: It could be done in either 24 arena. 25 CHAIRMAN O'HARA: Would the Commission</p>
<p style="text-align: right;">Page 35</p> <p>1 have a quorum today, don't we? 2 Okay. Comment, Hal? 3 MR. GILL: No. Actually, they're not here. 4 So if we have a quorum without the other members -- 5 CHAIRMAN O'HARA: Any comments or 6 questions? 7 MR. GILL: I'll make a motion to accept the 8 2002 annual report that's to go to the legislature. 9 MR. SMITH: I'll second it. 10 CHAIRMAN O'HARA: Any other discussion? 11 We've got a motion on the floor and seconded to approve 12 the UST Policy Commission's annual 2002 annual report. 13 All those in favor please say aye. Opposed? Motion 14 passes. 15 Moving on to Item 5, the technical subcommittee 16 update. I'll turn this over to their chairman, Hal Gill. 17 MR. GILL: The first thing I'd like to do 18 is I had a request here and Paul Galene from ASU has to 19 leave, so he's not going to be able to wait until the 20 very end of the meeting, and he had a presentation he 21 wanted to make on a proposed remediation research 22 program. So if Paul -- 23 CHAIRMAN O'HARA: That's in the context of 24 an item to come forward at the next meeting, right? 25 General public comment.</p>	<p style="text-align: right;">Page 37</p> <p>1 members like to see it here at the full Commission 2 meeting? 3 MR. SMITH: My feeling is, like a lot of 4 things, it should be condensed when it gets to here, that 5 a lot of the grass roots work should be done in the 6 subcommittees. 7 MS. CLEMENT: A question? Has there been 8 an expression for the need for this type of work by the 9 Policy Commission, just so I understand what the 10 background is. 11 MR. GILL: Well, I think it was just as 12 Paul said, it was based on the report. I don't know that 13 we -- we haven't even finished review of the report yet 14 and recommendations, but one of the -- one of the things 15 that came out of the report was that they were asked 16 originally in the legislation to look at how particular 17 remedial technologies were working and they couldn't make 18 a determination on that because there was no real data to 19 compare one or the other. So I think that is one part of 20 what he's recommending is a remedial study to look at 21 different -- maybe different remedial technologies, but 22 also the ones that we're doing now existing remediation 23 technologies compared to the same technology with more 24 wells or something like that. 25 MS. CLEMENT: So I guess my other question</p>

<p style="text-align: right;">Page 38</p> <p>1 is: Are we going to try to deal with this request before 2 we finish the analysis of the report and any 3 recommendations that the Policy Commission wants to move 4 forward from that report? Is that what I'm hearing? 5 Because I would suggest that we spend some time on the 6 work that has already been done and utilize that as the 7 basis for determining in addition to whatever 8 presentation ASU has on whether the Policy Commission 9 would be willing to support additional funding and 10 research. 11 MR. GILL: Well, that's why we bring it 12 up -- 13 MS. CLEMENT: Then I would say the 14 technical subcommittee. 15 MR. BEAL: In light of that, I think that a 16 presentation highlighting things that ASU feels needs to 17 be looked at or could be looked at to improve what we do 18 coming from the groundwater study, I would like to see a 19 presentation on it just to kind of help me interpret the 20 groundwater study by itself. Also, if there's things 21 that are more effective than what we're doing, I'd like 22 to know about that, too. It doesn't mean we have to take 23 any action on it. It doesn't mean we have to recommend 24 it. It's just information that somebody feels should be 25 presented, and I'd like to listen, either in the</p>	<p style="text-align: right;">Page 40</p> <p>1 Basically, the first -- 5(a) is the -- or five, 2 the first bullet, which is my A, is just -- I assume all 3 the members got the summary from the last subcommittee 4 meeting. I'll just go through it real briefly because a 5 number of these are handled in the next few bullets. So 6 I'm not going to get into them. 7 Basically, the first thing we did was we spent 8 a lot of time discussing the groundwater sampling water 9 level measurement matrix. DEQ proposed an alternative 10 table, which I think was sent to all of you as well, and 11 I will be going -- looking at that in the next bullet. 12 That was -- I think it was a really good meeting. We 13 were able to, I think, reach some real good consensus. 14 We really appreciate DEQ coming back with -- responding 15 with their table. 16 We looked at the reporting issues for the 17 groundwater quarterly monitoring, although we haven't 18 really haven't got to the -- yeah, groundwater sampling, 19 the measurement. We haven't got to the remediation yet, 20 but we looked at the reports. We have to do a little 21 more work on remediation reporting and the O&M reporting, 22 and that's -- and I'll touch on that as well in the 23 privatized discussion. But the -- those were the main 24 things that I have on the -- that basically Al and I put 25 together for the presentation -- or for the summary. And</p>
<p style="text-align: right;">Page 39</p> <p>1 technical or at this forum here. 2 CHAIRMAN O'HARA: Any other comments or 3 questions? 4 MR. GILL: Paul, would long would -- or 5 would you be prepared by the next Policy Commission to 6 make a presentation because that's two weeks? 7 MR. GALENE: Is that the technical 8 subcommittee meeting? 9 MR. GILL: Yes. 10 MR. GALENE: We have a presentation in hand 11 right now, and it could be kept reasonably brief. It 12 could be -- my idea was maybe a five- or ten-minute 13 presentation, and then depending on time and interest, we 14 can expand from there. 15 MR. GILL: Because that is what's on the 16 agenda for the next technical subcommittee meeting is the 17 groundwater study. So we could do it as part of that, 18 and then we can decide whether we -- because the very 19 last recommendation we're going to look at was 20 remediation, and then we could move that around if need 21 be. Okay. So just check with me and we'll let you know 22 the schedule. 23 MR. GALENE: Okay. 24 MR. GILL: All right. Okay. I'll move on. 25 Thank you, Paul.</p>	<p style="text-align: right;">Page 41</p> <p>1 as I said, we did not -- hadn't gotten to the reporting 2 guidance or evaluation of the data, types of reports, 3 because I know there is some concern and questions out 4 there as far as what does DEQ want as far as the reports 5 themselves now that we're going away from quarterly and 6 to the status reports that are in -- that we have a forum 7 for. So there needs to be some kind of understanding so 8 the owner/operators and consultants know exactly what to 9 be turned in, and the discussion was whether it was just 10 going to be used as a data dump or it's just the data or 11 how much evaluation do you want in the report. We didn't 12 get to the -- it's just the evaluation and the corrective 13 action plan. And I'll save Number Three on there for the 14 next five. 15 Five, the second bullet, as I said, we had a 16 really good meeting on the groundwater study, and I 17 basically yesterday sent -- and this is what I have here 18 to hand out to everybody here. This was the table that 19 DEQ presented at the meeting or actually that was sent 20 out last Thursday or Friday with -- and they put in a 21 couple of changes that the stakeholders had asked for, 22 and what you see in yellow here are the suggestions that 23 I sent on to Phil and Ian and Shannon yesterday, I think, 24 after getting back from the break, and I wondered if we 25 can -- they're very, very simple suggestions, and I</p>

<p style="text-align: right;">Page 42</p> <p>1 wondered if we can discuss those because I really would 2 like to vote on this to get this done and in the bulletin 3 so there is something in place so everybody knows exactly 4 what they're supposed to do. 5 But as you can see, the language is exactly 6 what was there with the exception of the yellow highlight 7 is what was added, and this is what I sent you yesterday, 8 Phil and Ian. The language with the exception of the 9 yellow highlights was consensus at the last meeting, and 10 then what Phil sent back to me was that language, but I 11 wondered if DEQ could respond to the highlights and see 12 if they have any problems with those. 13 MS. DAVIS: Mr. Chairman, I just want to 14 bring up a process question or a statement. It's been 15 asked of the Commission that when we go to technical 16 subcommittee meetings, that the agency come prepared to 17 indicate its policy direction, and so we've worked hard 18 to get me in the loop to brief me so that when these guys 19 go to the technical subcommittee, we're ready to go, and 20 it took us a while to get there, but we've done that. 21 And to get -- to have a request come in the day before a 22 Policy Commission meeting to adjust again after there's 23 been my -- and what I've been told in the report, that 24 there was an agreement at the technical subcommittee for 25 this, and Hal, I'm not even -- I haven't even had an</p>	<p style="text-align: right;">Page 44</p> <p>1 out of the Policy Commission that if we agree on the fine 2 language at the technical subcommittee, which is two 3 weeks, then we could put it on the bulletin board rather 4 than do we need to bring it back here again a month 5 later. 6 CHAIRMAN OHARA: You probably need to 7 bring a completed product back and have a quick vote on 8 it. You don't want to vote on an open policy. That's 9 fine. Do it next month. 10 MR. GILL: All right. If anyone has any 11 questions of the Commission members, then just bring them 12 forward to me. 13 And I keep -- to keep the Policy Commission 14 apprised of where we're -- of what the technical 15 subcommittee is doing, seems how we actually did 16 accomplish things in the last technical subcommittee 17 meeting, there's basically a new prioritized list, and we 18 just did a little bit of shifting. We will be touching 19 on the first two again, obviously, because as I said, we 20 didn't have -- didn't have time to complete those, but 21 basically the top five now after we -- again, at the 22 groundwater sampling water table, frequency table, some 23 finalized, as I mentioned earlier, requirements for the 24 groundwater and remedial monitoring report -- program 25 reporting. New ones that we'll be starting on, I assume,</p>
<p style="text-align: right;">Page 43</p> <p>1 opportunity to look at what you're requesting. So it's 2 not a substantive complaint at all. It's just we have a 3 whole bunch of work going on and it's like trying to move 4 the octopus to respond. 5 So my request is that we come prepared for a 6 technical subcommittee meeting, and we bring the policy 7 there because it's very difficult to respond in less than 8 24 hours to a change that we thought had been agreed upon 9 at the technical subcommittee. So if I'm missing 10 something, please tell me, but I'm very committed to 11 having good process in all of these processes. 12 MR. GILL: And that's fine. And I -- we 13 agreed on the language that was in there, but we had 14 asked for some changes and -- but we hadn't seen those 15 changes yet. So that's -- when we finally got it back, 16 these were the things that I received from stakeholders 17 that they said would make it -- and like all the ones 18 down below in the text, those are all just clarification 19 changes, and I didn't see the DEQ having any problem. 20 But I don't have any problem waiting to vote on it. I 21 just really wanted to get it going, and to me, these were 22 real -- they were all clarifications. They weren't any 23 change in content or anything. But, you know, if we want 24 to wait -- you know, I guess we could -- to move things 25 forward a little bit, I guess if we could get consensus</p>	<p style="text-align: right;">Page 45</p> <p>1 the next meeting is the feasibility study and pilot 2 testing implementation and reporting. And this has been 3 an open issue forever because there's confusion when to 4 do the pilot testing, I think on both the stakeholders 5 and DEQ side, because we don't really know where to go. 6 We'll get denials when we propose it, and then other 7 times it's asked for. So we really need to have some 8 discussion as to when pilot testing feasibility studies 9 are required and have a good discussion on that. 10 The next one is remedial O&M issues, and that 11 basically deals with we've got to have some consensus 12 between DEQ and the stakeholders of exactly what is to be 13 done for O&M, what it entails, what it doesn't entail, 14 what is outside of it. And we really have to discuss the 15 issue of the number of visits because we are seeing 16 denials on down time when the unit is down for denials on 17 payment of the -- the fee, the rental fee. 18 And then Number Five was remedial alternatives. 19 Basically that was the CAP, the CAP issue, and there was 20 some -- and again, remember, these are all from the 21 parking lot issues, and what was discussed in the 22 original meetings going through the guidance document was 23 the option of if on some sites where you know it really 24 makes no sense to do any other alternative, do we need to 25 go through the cost of preparing an entire CAP with all</p>

<p style="text-align: right;">Page 46</p> <p>1 the remedial alternatives or just put down this is what 2 needs to be done, and there was some discussion on that. 3 Sometimes it seems perfectly clear. Anyway, that's what 4 the discussion will be, and then what you have there are 5 the remaining issues that are ongoing, and these will 6 just basically come up into the agenda, the top five. 7 MS. CLEMENT: Mr. Chairman, first of all, 8 I'd like to thank DEQ for their involvement in the 9 subcommittee. I think that this has worked really well, 10 and I think the last technical subcommittee was really an 11 example of the Policy Commission and the DEQ working 12 together on technical issues to resolve them. 13 Secondly, there were some outstanding issues on 14 the water level measurements that still needed to be 15 resolved, and that was basically, I think if I phrase 16 this correctly, for those sites that were in process, how 17 were you going to manage that monitoring frequency, and 18 you were going to look at the numbers of sites that met 19 that category and then come back to the technical 20 subcommittee and give an answer in how you'd like to 21 handle that. So I do think that it is a tad premature to 22 try to make a vote on this, but I do want to commend DEQ 23 on their responsiveness on these issues. Thank you. 24 MR. GILL: Again, I appreciate you 25 mentioning that because I had forgotten that, but</p>	<p style="text-align: right;">Page 48</p> <p>1 because these either need to be moved forward, and we can 2 decide now whether we want to look at them right away or 3 whether we want to just put them in line. Basically, 4 each time we're ready to move forward, we may 5 reprioritize at the technical subcommittee, but the last 6 three, the RBCA tool kit and model and the DEUR, Number 7 Two, MTB investigational remediation issues because these 8 aren't -- that issue isn't addressed in the guidance 9 document because it was in process when the guidance 10 document was being done. So it had to be revisited, but 11 I don't think -- I think we understood that and didn't 12 put it on the parking lot. So anyway, that's why it's 13 there. And then the third one was the new contaminants 14 of concern, such as MTB showing up or something like 15 that. So we need discussion with these issues as far as 16 what we want to do with them. 17 CHAIRMAN OHARA: We're satisfied with your 18 judgment. 19 MR. GILL: So I guess at the next technical 20 subcommittee, we'll just decide if we want to work any of 21 these three items in with the other ones if they think 22 they're more important or whatever. 23 Okay. And the fourth thing is the way the 24 bulletin was set up is that basically the bulletins are 25 all sent to me -- or the topic requests are all sent to</p>
<p style="text-align: right;">Page 47</p> <p>1 actually, this table wouldn't cover those issues anyway. 2 So we could vote on this to get the ones -- this is 3 basically from this point forward, but the big issue was 4 the sites that were in process that already had the site 5 characterization reports approved but have no guidance as 6 far as, like this table states, the frequency of the 7 sampling and the monitoring, and DEQ was going to look 8 and see what they could do on that. 9 And did you get any movement at all on that at 10 this point? 11 MR. BINGHAM: We're still working towards 12 getting it for the technical subcommittee in two weeks. 13 MR. GILL: All right. Thank you, again, 14 Gail. I forgot that. 15 And I guess if the Policy Commission -- the 16 reason I presented this list to the Policy Commission is 17 the Policy Commission wanted to see what issues were 18 going to be moving forward and if there are any issues on 19 this list that the Policy Commission doesn't believe 20 needs to moved forward, I need to hear it because this is 21 what we're planning on moving forward. And as I said, 22 the top -- the first ten are issues that were on the 23 parking lot list, the original parking lot list. The 24 last three we may want to look at and see if we 25 want -- how the Policy Commission wants to handle these</p>	<p style="text-align: right;">Page 49</p> <p>1 me, and then I provide them -- now, we decided after last 2 meeting, I provide them to the Commission members plus 3 any backup that goes with them, and then we present them 4 at the Policy Commission basically to see if in some 5 instances whether they can go directly to the bulletin, 6 others whether we think there needs to be discussion at 7 the technical subcommittee or if they think it's not 8 important, to move forward. 9 The first three issues that were brought 10 forward were from the letter which you all should have 11 copies of from -- that Shannon and Bob signed, and I 12 think that's what the first -- yeah. Issues One through 13 Three deal with that letter, and I don't know -- and I 14 guess the only question on this one is is this something 15 that requires discussion, more discussion at the 16 technical subcommittee or is it something -- because it's 17 already in place and this is what I understand is the 18 policy or guidance from this point forward. 19 CHAIRMAN OHARA: Have you guys had an 20 opportunity to see the letter? 21 MS. NAVARRETE: Is he discussing items to 22 be put on the bulletin? 23 CHAIRMAN OHARA: I think there's bulletin 24 request items that Hal has that these three in particular 25 were part of letters -- all three of them are part of a</p>

<p style="text-align: right;">Page 50</p> <p>1 letter from the Department on how they were going to 2 implement certain policies. So he's trying to codify 3 that in a bulletin. So I guess the question is, does 4 DEQ -- first of all, have you seen it? Secondly, if you 5 agree with it the way it's written in the bulletin, and 6 if you do, then it's consensus and we can vote on it. If 7 not, then it may need to go back to the technical 8 subcommittee for review. 9 MR. GILL: Well, I send them to the Policy 10 Commission members, but I understood that Judy should be 11 getting the same requests forms that I do. 12 MS. NAVARRETE: That would be a good idea 13 because from the descriptions here, I don't know -- I 14 don't know what you're wanting from me. 15 MR. GILL: Now you know what it's like. 16 CHAIRMAN O'HARA: Well, the agendas aren't 17 real in depth on these issues because the idea, I 18 thought, Hal, was to really go through and look at that 19 in the technical subcommittee and really what you're 20 bringing them to us for is to say, "Do you want us to 21 look at these issues?" "Was it important enough for the 22 technical subcommittee to spend this time and bring back 23 a recommendation?" Obviously, number one, if they're 24 familiar with its consensus, we can vote on it. If not, 25 we'll just look at them in the technical subcommittee.</p>	<p style="text-align: right;">Page 52</p> <p>1 me is it's not absolutely sure that everybody knows this 2 yet. There wasn't any disagreement with it, but it 3 was -- many of us understood this, but I just wanted to 4 make -- this is something that's fairly important having 5 to do with which cost ceilings are used based on whether 6 or not the report goes -- the work plan -- the date the 7 work plan is submitted or the date that there is a 8 contract. And I think the key point in this is that -- 9 and that's basically what John said, is that once a work 10 plan is turned in, if it doesn't say in the work plan 11 that this is based on a contract, then it's based on the 12 date that the work plan is submitted. And so if the 13 owner/operators want to specify their contract at a 14 particular date, then you have to say that. And I know 15 that very well could have been a problem in the past, but 16 John, if you want to explain more of my paraphrasing. 17 MR. ALSPACH: For the record, my name is 18 John Alspach with the UST State Assurance Fund. In 19 accordance with the provision of ARS 49-1054 subsection 20 C, payments to -- from the SAF are based on the date in 21 which the applicant entered into a contract for the work 22 that's the subject of the application. But if that date 23 cannot be determined, then it's based on the date the 24 work is performed. With preapprovals, we have a little 25 different situation in that we use the preapproval to</p>
<p style="text-align: right;">Page 51</p> <p>1 Shannon. 2 MS. DAVIS: Mr. Chairman, if Bob Rocha and 3 I have signed them, I'm assuming we agree with them. I 4 know that's not always the case. I think the only issue 5 would be is let's go back and look at the wording that's 6 on the bulletin and just make sure it's good, and if we 7 have any questions about the way it's worded, we'll take 8 it back to technical, if not, we'll just get it on the 9 bulletin. 10 Bob, we've signed them; we're accountable. Are 11 you good with that? 12 MR. ROCHA: Yeah. 13 MR. GILL: I did check the language. 14 MS. DAVIS: We'll check that. 15 MR. GILL: The next topic request, which 16 would be your Number Two, and this concerned -- and 17 basically I think this is a clarification, and I still 18 think there's -- because I know Ron Kern called me. 19 There was some concern that is this an issue for the 20 bulletin, but my understanding of the bulletin is it's 21 basically to get information to the regulated public so 22 there's an understanding of this is what is being done, 23 and this was a statement that John Alspach made in the 24 meeting we had in the basement over there, and I don't 25 know that -- and I guess the reason this was submitted to</p>	<p style="text-align: right;">Page 53</p> <p>1 determine the amount of money that is approved, and since 2 we are not omnipotent, all we can go by is the date that 3 we receive the preapproval application to determine which 4 cost ceiling is going to be applied. 5 Now, if there is a contract in existence that's 6 been entered into for that work that's the subject of a 7 preapproval, then we can base or should base, have to 8 base the cost ceiling that's applied to that preapproval 9 on the contracting. Now, if there is no preapproval or 10 there's no contract for the work that's the subject of 11 the preapproval, then we use the date that we received 12 the preapproval to establish that applicable cost 13 ceiling. 14 On the website now there's a contract date form 15 that would apply to reimbursements where you check off, 16 you know, this is subject to a contract and this is the 17 date the contract was entered into or certify that no 18 contract existed. 19 Is that what you were looking for, Hal? 20 MR. GILL: Well, I think what the request 21 was is that the clarification that you just made be put 22 on the bulletin because it evidently is not necessarily 23 an issue for reimbursement, but it looks like it is an 24 issue with preapproval. And evidently that still isn't 25 clearly understood, and as I said, if it isn't</p>

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1 understood, if the reason is they're not, "they" being
 2 the owner/operators that are turning in a work plan --
 3 preapproval work plan, want to specify a date that -- you
 4 know, rather than the date submitted as the preapproval,
 5 then they need to do that. And I don't know if they're
 6 doing that or not. I don't know exactly what the problem
 7 was, but the request here was that the -- just basically
 8 what you just said be put on the bulletin to clarify work
 9 plans as well as reimbursement.

10 MR. ALSPACH: Well, I hadn't realized that
 11 was a problem.

12 MR. GILL: Like I said, that's what I had
 13 always believed the purpose of the bulletin was, was
 14 to -- if there is something that is not clarified, that
 15 it needs to be -- if there's a particular way that DEQ is
 16 making a determination, then it would -- that's a good
 17 place for the bulletin.

18 CHAIRMAN O'HARA: I'm just going to offer a
 19 suggestion. It may be more appropriate -- I know we're
 20 having this SAF training seminar. In the past, seminars
 21 we've had, they produced a booklet, kind of a how to
 22 prepare an application and it had guidance in there such
 23 as this, how to develop this request, contract dates and
 24 so forth. Would it be a more appropriate place to put
 25 something like that or the bulletin board?

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1 could be --

2 MS. MARTINCIC: No. We meant a new one.

3 MS. NAVARRETE: I'd like to have a new one
 4 to go along with our new applications, and I know that
 5 that's going to take a few months, but I think that that
 6 would be a better help to the consultants than trying to
 7 go back and piecemeal something that they don't
 8 understand or that no one would understand. So I'd like
 9 to tackle that with new information instead of trying to
 10 fix the old.

11 MS. DAVIS: Judy, just one question. Then
 12 the new application and the new how-to booklet that would
 13 go with that application would include what John just
 14 walked through about what determines the cost ceilings,
 15 whether it's a preapproval or whether it's a contract
 16 date, and all that's rolled into the how-to booklet for
 17 the new application. So would that cover everything
 18 that's been raised here?

19 MS. NAVARRETE: Uh-huh. John is just
 20 putting it into his recorder now.

21 MS. MARTINCIC: Will that be available next
 22 week at that UST conference or not?

23 MS. NAVARRETE: No.

24 MS. MARTINCIC: How far off are we talking?

25 MS. DAVIS: For an interim, is it practical

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1 MR. GILL: Well, that would be a good place
 2 for it, but again the only people that are going to get
 3 the benefit of that explanation are the ones in the
 4 training, and that's the only reason for -- I mean,
 5 there's many of us, unfortunately, that go to all these
 6 meetings, but there's many many more that do not, and
 7 that's really what I always thought the purpose of the
 8 bulletin was to get this information out to the
 9 stakeholders.

10 MS. MARTINCIC: I like the idea of the
 11 book, and then the book can either be put on-line or a
 12 link could be linked on the bulletin to the book or
 13 something like that.

14 CHAIRMAN O'HARA: The book essentially in
 15 the past became guidance because it really went through
 16 all the things that were eligible and ineligible and how
 17 tos. And maybe if that comes out in guidance, we can put
 18 that bulletin or PDF or whatever on the website.

19 MS. NAVARRETE: I'm a little leery of that
 20 right now. We're going to a new application form, and
 21 we're just about ready to -- on the final draft of the
 22 new applications, and I'm pretty sure that probably some
 23 of the things in the application existing now have been
 24 changed since Peterson published that book. So I
 25 wouldn't want to put that book up there because that

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1 to just get on a bulletin what John just went through? I
 2 mean, a couple paragraphs. I mean, even I understood it.
 3 So if we can do that as an interim measure and then the
 4 how to which is larger and more comprehensive will come
 5 later.

6 MS. NAVARRETE: We could certainly do that.
 7 We'll put it on the bulletin as contract aid.

8 MR. ROCHA: Bob Rocha. I just want to make
 9 sure that we get a copy of the requests that are being
 10 made and what is being said so that we can respond more
 11 appropriately.

12 MR. GILL: I thought they were
 13 automatically going to you because it's a DEQ web page.

14 MR. ROCHA: It's hard to hit a moving
 15 target.

16 MR. GILL: Well, I know it isn't set up the
 17 way -- ultimately, will you get a copy as well?

18 MS. NAVARRETE: They have to send it to me
 19 or you have to forward it to me. Because I wanted it to
 20 go in and be disbursed, but that's not possible.

21 MR. GILL: I thought -- I misunderstood. I
 22 thought it was automatically going to you as well as to
 23 me. So I thought you were getting that, and that's why I
 24 just sent it to the Policy Commission, but I'll send it
 25 out to you as well.

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1 MS. NAVARRETE: Okay. Thank you.
 2 MR. GILL: The fifth topic, which is your
 3 Topic Number Three, and this one had to do with -- it's
 4 the fifth topic request concerns the levels of benzene in
 5 water used as the standard for determining which sites
 6 will be remediated, which sites to submit a CAP, which
 7 sites need to be remediated and when remediation is
 8 terminated. And this one I think would need to go to the
 9 subcommittee rather than -- there's nothing in place.
 10 CHAIRMAN O'HARA: Let me just reiterate.
 11 The purpose of today's meeting is not to go in depth on
 12 these issues. It's just to really determine from the
 13 Commission standpoint whether we feel it's appropriate
 14 for the technical subcommittee to look at these issues.
 15 Do you have a comment to add?
 16 MR. McNEELY: Yeah. Item Number Three.
 17 Really, the corrective action rules makes this thing
 18 obsolete. I came up with a number back when I was there
 19 four or five years ago, but the corrective action spells
 20 out when CAPs shall be submitted and when a CAP may be
 21 submitted. There's no -- there's really no bearing on
 22 this statement anymore.
 23 MR. GILL: But it isn't just CAPs, though.
 24 It's -- basically, my understanding is benzene
 25 concentrations are being used as -- well, we're closing

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1 this site or we're stopping the remediation or whatever
 2 based on benzene levels. So that's -- there's either a
 3 misconception or whatever. So that was the reason for
 4 the discussion. It isn't just -- because see, you're
 5 right, and I have made a bunch of copies and we don't
 6 need them, for the CAP in the guidance but it has nothing
 7 to do with benzene or anything. It just says anything
 8 that's above remediation, and then it spells out when a
 9 CAP may be or when it will be -- but evidently there's
 10 some confusion out there and it is a discussion item.
 11 The fourth topic for -- and I don't think Jeff
 12 Trembly is here because he said he wasn't going to be --
 13 this is a volunteer issue, and basically says the sixth
 14 topic request concerns volunteers delaying active
 15 corrective action activities on their site until the
 16 funds are made available from the SAF. If the ADEQ does
 17 not allow the volunteer to wait for the funds, then once
 18 again the ADEQ is creating a disincentive for the
 19 volunteer to complete or even start the cleanup. That's
 20 a real condensation of a page and a half, but that --
 21 basically the main issue is -- again, I think we've
 22 already identified, there are a number of issues in the
 23 statute that don't take into account volunteers and this
 24 was another one, from the way I read this. So that's
 25 just another one that was requested to be put on the

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1 discussion.
 2 CHAIRMAN O'HARA: Any objections to
 3 those -- these issues being studied at the technical
 4 subcommittee? Okay.
 5 MR. GILL: That's it.
 6 CHAIRMAN O'HARA: Great. I'd like to at
 7 this point call for a ten-minute break.
 8 (Whereupon, a 16-minute recess ensued at
 9 10:31 a.m.)
 10 CHAIRMAN O'HARA: I'm going to call this
 11 meeting back to order, if everyone would take a seat,
 12 please.
 13 Next, before getting started, I wanted to allow
 14 Shannon -- she asked for a few seconds to describe some
 15 information in a format that she had passed out to all
 16 the Committee members.
 17 MS. DAVIS: Thanks, Mr. Chairman.
 18 Members of the Commission, hopefully you
 19 received in your -- in the mail -- we didn't get it in
 20 the mail until Friday, I believe -- just a packet, a
 21 meeting packet, and we want to be able to continue to do
 22 this every time. So a couple of things. We're going to
 23 need to have the agenda set earlier in order to do this,
 24 and I'm thinking that we should have the agenda set, at
 25 least a fairly certain draft, two Monday's before the

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1 Commission meeting, and I believe the technical
 2 subcommittee will be meeting the Wednesday before that.
 3 And so there should be able to be an agenda kicked out of
 4 that for the items that go on there, because if the
 5 agency gets the agenda by Monday, then what we can do is
 6 make sure that we have all the information that goes
 7 to -- go in the packet by Wednesday, and then we'll get
 8 it mailed out. Because I think in order for everybody
 9 here to discuss issues intelligently, the backup
 10 materials should be mailed by Wednesday, and then you get
 11 them before the weekend.
 12 So my request is in order to help staff the
 13 Commission, that the agenda be finalized as much as
 14 possible the two Mondays before and Hal, that drives you
 15 to get that technical subcommittee agenda items in the
 16 two days following the technical subcommittee, and I
 17 think we'll be in pretty good shape to get packets. And
 18 we want to staff -- we want to get you what you need. So
 19 if you have additional requests or you want to see it
 20 differently, I think we're working on the timing right
 21 now, but in terms of substantive, give me a call or you
 22 can let me know now as well.
 23 CHAIRMAN O'HARA: Thank you. And kind of
 24 what we've been moving to the last few meetings is to
 25 have that agenda item number, this week it's Number 10,

<p style="text-align: right;">Page 62</p> <p>1 but it's a discussion of agenda items for next month's 2 Commission meeting, and my goal is to actually have the 3 agenda items pretty much finalized at this meeting so 4 everyone leaving this meeting should know what to expect 5 at the next meeting. If there's things that come up in 6 the interim, we can put it under that Item Number 10. So 7 let's try to focus this meeting on what we want to look 8 at next meeting and it shouldn't a problem getting the 9 agenda out by that date, Shannon.</p> <p>10 Okay. Moving on to Item Six, the financial 11 subcommittee update. We had a financial subcommittee 12 several weeks ago and looked at -- the topic was the 13 allocation of the 21 percent administrative budget, and 14 as many of you know, our mandate for the statute is to 15 review the effectiveness of the program, including the 16 appropriate use of state assurance account monies. And 17 towards the goal, we looked at the administrative budget 18 and submitted a request to the Department back in 19 December and had quite a bit of data, very detailed data, 20 had a breakdown of every person by personnel 21 classification within the Department as to who was coming 22 out of the State Assurance Fund or was funded by the 23 State Assurance Fund. We got a job classification 24 description and what that person does, and we also got 25 some data that had some budget data going forward as to</p>	<p style="text-align: right;">Page 64</p> <p>1 elaborate if I misspeak -- but the Department didn't 2 really have what we called a cost management system, 3 which is essentially taking personnel hours and 4 allocating them to jobs, LUST numbers, activities, and 5 that way you could, you know, create an average look at 6 what you expect your manpower requirements to be going 7 forward. It wasn't there, and so we weren't able to 8 determine that the activities were appropriate. We just 9 can't really make a determination on the appropriate 10 level, and therefore my recommendation, as the 11 subcommittee chair, which I've passed around to the 12 Commission members, was to recommend to the director to 13 at least consider implementing a cost management system 14 so that they can track costs and determine what the 15 appropriate level is. And I think if you read my letter, 16 it's going to be very important going forward, as we've 17 had some data submitted to us that shows that the number 18 of claims have decreased, the number of closures have 19 increased it, number of new releases is decreasing. So 20 in a general way, the workload seems to be at least 21 trending down, and so in order to project what your 22 current or your future needs are going to be for budget, 23 it would be very helpful to have a tool such as the cost 24 management system. And that was our recommendation. I 25 kind of put it on the table now for a vote and</p>
<p style="text-align: right;">Page 63</p> <p>1 what the administrative budget was going to be because 2 many of you may know the administrative budget is capped 3 at 21 percent of the annual State Assurance Fund 4 revenues, and by statute, it cannot go any higher than 5 that. And I believe this year that amount approximated 6 six million, a little bit less, pretty close to six 7 million.</p> <p>8 So the goal of the subcommittee was to 9 determine whether that amount and the types and 10 allocation of that money was appropriate, and the detail 11 allowed us to look at the types of activities and 12 personnel that were being charged from the fund and that 13 appeared to be appropriate pursuant to the statute. The 14 part that we had a little more difficulty on and really 15 could not make a determination on was whether the amount, 16 the 21 percent, the six million, was appropriate, whether 17 it was too low, too high. We just didn't have enough 18 data to determine that, and what originally the 19 subcommittee wanted to do was to look at the outputs that 20 that \$6 million provides, such as reviewed claims, 21 reviewed reports. There's many, many deliverables the 22 Department has, and then try to, you know, allocate 23 manpower to those outputs so they can say whether it's 24 appropriate or inappropriate. We just couldn't do it.</p> <p>25 The Department -- Bob, you might want to</p>	<p style="text-align: right;">Page 65</p> <p>1 discussion.</p> <p>2 MR. SMITH: Mike, I guess I'd like to hear 3 from DEQ what it would take to implement a system like 4 this.</p> <p>5 CHAIRMAN OHARA: Bob, do you want to 6 address that?</p> <p>7 MR. ROCHA: Again, Bob Rocha for the 8 record, Mr. Chairman. It's kind of difficult to assess 9 what it would take on the fly here, but it requires 10 obviously a design of a time sheet that would capture the 11 activities by LUST number. It would require the 12 Department inputting the information, like everybody 13 else, into a cost allocation system that we currently 14 don't have. Possibly, some software acquisition, whether 15 it's a small inexpensive package or if we're talking of 16 integration with the payroll system to prevent the 17 Department from double inputting information because the 18 payroll system is connected to the statewide system, 19 which generates the paychecks, and you have a certain 20 format for that.</p> <p>21 So to prevent the duplication, if you will, 22 would require an integration of that data or an interface 23 of some sort, and I don't know what that cost would be 24 and the requirements. Again, it would require a 25 reporting mechanism. You want some results after you</p>

<p style="text-align: right;">Page 66</p> <p>1 inputted the data, you want the results coming back, and 2 definition of those reports, designing those reports and 3 the output. 4 So I think those are the elements that I can 5 give you, and yes, it would require some participation 6 from the members to identify what exactly are we looking 7 for, because my feeling and I know the Department's 8 feeling is that we want to provide the information that 9 you need to be active and good members of the Commission, 10 so that you are informed so that you can participate in a 11 positive manner. So I don't know if I've answered the 12 question, but I think that gives you some idea of some 13 elements that are there. 14 MR. SMITH: From your many years of 15 experience in state government, is this something that 16 can be done in months or is it going to be something that 17 would take years, in your best guess, in what you've seen 18 in your experience? 19 MR. ROCHA: If it's well defined and 20 parameters -- again, it's like everything else. It 21 depends on the scope. If the scope is so huge and the 22 funding is very small, it will just take years because 23 all you can do is tag time to it, but if the scope is 24 defined correctly and well defined and is not an 25 ambitious thing, then you can do something in months. I</p>	<p style="text-align: right;">Page 68</p> <p>1 director a lot of flexibility, and if we wants to 2 consider it, that may be a good model or it may not be a 3 good model, but I think that's a great suggestion. I 4 think we leave it open ended. 5 MS. CLEMENT: Mr. Chairman, my question 6 is -- I'm thinking of this in very simple ways, and is it 7 possible -- right now obviously they can capture the 8 number of claims that are reviewed and they can also 9 capture the number of labor hours spent per -- not per 10 review but per the total of claims reviewed. Would that 11 be a sufficient parameter that we could utilize as a 12 Commission in terms of, you know, they're getting the 13 work out, because right now their in a catch-up mode. 14 Because if you have individuals tracking time against 15 particular sites, what value added is that to us? I 16 mean, what we're really looking at is the bigger picture, 17 and I just put that out. You know, how detailed does 18 this thing really need to be to get the information that 19 you're trying to acquire. 20 CHAIRMAN O'HARA: Well, that was our -- 21 your first suggestion was actually what we wanted to do 22 was look at some broad deliverables, such as reports and 23 claim process versus manpower, but I think Bob had some 24 really good reasons why some of that data might be 25 invalid, and I don't want to speak for you, Bob, but he</p>
<p style="text-align: right;">Page 67</p> <p>1 mean, that's my belief, but again, it will require some 2 resource. Whether it requires resource allocation in the 3 Department, whether it requires resource dollars from the 4 fund and expenditures outside the 21 percent limitation. 5 Those are things that need to be discussed by the 6 Commission. 7 CHAIRMAN O'HARA: Thank you. I just want 8 to point out, Myron, those are good questions and the 9 subcommittee didn't have, obviously, the answers to a lot 10 of those, the unknowns, and so we've -- the way it's 11 worded in the recommendation is to -- the Department 12 should consider implementing it and that consideration 13 applies to look at the cost benefits and determine 14 whether it's worthwhile. 15 MS. MARTINCIC: If I remember right, I 16 think we were trying to find out in this financial 17 subcommittee meeting whether or not like WQARF or any of 18 the other programs already sort of have a system like 19 that in place. I think someone had mentioned that WQARF 20 tracks their expenses in that way, and I think it would 21 make sense and maybe save everyone a lot of time and 22 energy if we can find out maybe how they've set it up or 23 how they've done it and duplicate it possibly. So I 24 don't know if we'd want to add something in the letter. 25 CHAIRMAN O'HARA: Well, I want to leave the</p>	<p style="text-align: right;">Page 69</p> <p>1 explained at the meeting some of those reasons, and 2 there's also a lot of other services the Department 3 provides that aren't defined by a work product, such as 4 that, and then -- so there was a lot of reasons why it 5 wasn't easy to do what you suggested, and that was -- my 6 initial desire was to do it that way, but I'll let the 7 Department speak to it. 8 MR. ROCHA: Again, my name is Bob Rocha, 9 Mr. Chairman. Again, as pointed out, there are many 10 different reasons. We have a lot of activities that are 11 charged to the SAF that don't directly relate to an 12 application and therefore it would be difficult to 13 even -- for those people to code those time sheets or 14 those elements to be able to track all costs. So that's 15 why I made the point before, and I make it again, is we 16 need some input as to what is the scope of this? Where 17 do we want to go? And what is it -- what is the 18 deliverable that you want? And once we define those, we 19 can certainly look at the cost and how we deliver this 20 thing. If it can be done fairly easily and simply, I'd 21 be glad to do that, and if it's more complicated, we need 22 to talk. 23 CHAIRMAN O'HARA: Any comments? Questions? 24 MR. GILL: How do we do that? How are we 25 going to provide them with it?</p>

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1 CHAIRMAN O'HARA: Well, I think this is one
2 of those areas, at least the way I've drafted this, was
3 it's more of an internal issue with the Department to
4 determine what an appropriate amount is. That amount
5 could be 10 million, 2 million. You just don't know
6 because you don't have any way of really judging it,
7 unless you do something simple like you suggested. It's
8 more of an internal management decision. Our
9 recommendation is we felt like we should have some system
10 rather than none.

11 MR. GILL: What Bob is saying is that they
12 can't really consider it or evaluate it if they don't
13 have -- if the scope isn't defined, if they don't know
14 what the deliverable is, and basically what the Policy
15 Commission wants reported.

16 CHAIRMAN O'HARA: Were you saying you
17 wanted us to come up with a more specific request of
18 scopes?

19 MR. ROCHA: Again, Bob Rocha. All I'm
20 saying is it would require some participation from some
21 of you to define with us what is it that we need to come
22 up with. It's different than what you just said, Hal.
23 It's not saying that you come up with this, you come up
24 with that, you come up with everything. Now that you've
25 given us everything, we'll react. That's not what I

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1 that. Then you can use that for budgeting going forward.
2 If our reports drop and our claims drop, is it the level
3 of personnel we need. So those types of tools.

4 MS. CLEMENT: Mr. Chairman, my suggestion
5 would be that the categories of work that say SAF
6 personnel do should be listed because they're all
7 obviously, according to Bob, not all claims processing.
8 And then you could potentially get your arms around what
9 percentage of the labor hours are going for those and get
10 an idea over time, you know, what's happening, but I
11 would -- I would be reluctant to see something very
12 complicated be put into place.

13 CHAIRMAN O'HARA: That's why I once again
14 leave it open ended to the director to determine what
15 kind of cost management system will be a cost benefit.

16 Since I made the recommendation, I'll make the
17 motion. I move that we -- the letter be sent to Director
18 Owens of the recommendations that the subcommittee has
19 written.

20 MS. MARTINCIC: I'll second it.

21 CHAIRMAN O'HARA: All those -- any
22 discussion? All those in favor of seeing this
23 recommendation from the financial subcommittee forwarded
24 to Director Owens to create and consider implementing a
25 cost management system to determine the appropriate level

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1 meant. It's a joint venture here. Define what is it
2 that will satisfy the need of the Commission, and then we
3 will work with you. We will try to define what we can do
4 and how we can do that and see if it will satisfy.
5 That's a joint effort here. It's a two-way street that,
6 at least, I'm asking for input so when I come back, you
7 say, "Well, nice try but you missed the mark."

8 MS. MARTINCIC: I think it says in the
9 letter kind of what we're -- I think it's in there about
10 personnel hours and expenses for the appropriate inputs,
11 outputs, claims process, reports reviewed.

12 CHAIRMAN O'HARA: I think that the first
13 step is to make the recommendation that we feel like some
14 type of system of tracking is necessary, and then if the
15 director says, yes, we want to implement something, and
16 at your point, you're suggesting that you get together
17 with us to design that system.

18 MR. ROCHA: Right, because it's a
19 management decision.

20 MS. CLEMENT: My only caution would be not
21 to make anything so complicated that you end spending so
22 many resources that it's useless.

23 CHAIRMAN O'HARA: Well, I think the basic
24 level we wanted was just deliverables in the form of
25 reports, claims processed and the man hours to generate

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1 of administrate of costs, please say aye. All those
2 opposed, please say no. Motion passes. Thank you.

3 Moving on to Item 6(b). This is an issue that
4 came up at the last meeting when we were discussing the
5 issue of phaseout.

6 MS. MARTINCIC: I just wanted to -- I
7 initially sent something out to my members to sort of
8 pool them on this, and some of the responses I got back
9 were interesting, and I wanted to clarify with Judy in
10 terms of those documents that you gave us at the last
11 meeting when you were talking about applications, are you
12 referring to applications, the initial application of the
13 release? So in other words, you're saying that the
14 number of reported releases are declining or are you
15 talking about applications for reimbursement through the
16 various stages of the process?

17 MS. NAVARRETE: Applications -- the
18 application report I gave you were applications filed
19 with SAF.

20 MS. MARTINCIC: Okay.

21 MS. NAVARRETE: That's a claim.

22 MS. MARTINCIC: So it would be for work
23 done?

24 MS. NAVARRETE: Because the actual release
25 would be filed with Ian.

<p style="text-align: right;">Page 74</p> <p>1 MS. MARTINCIC: Okay. So you were talking 2 about applications through the process to be reimbursed 3 for work? 4 MS. NAVARRETE: Right. 5 MS. MARTINCIC: Good. Because I think 6 that's the responses I got back from members were on 7 those applications versus initial applications for 8 releases. 9 MS. NAVARRETE: And those were the ones we 10 had on the books that were not paid as of that date. 11 MS. MARTINCIC: Right, right. And I did 12 not get the -- and I'm still polling members. I mean, my 13 initial responses have not been that they've noticed a 14 decline, and some of them felt that possibly it appears 15 that way because they're in no rush to submit the report 16 because of the -- they feel like they're not going to get 17 paid right away. So there's no rush to do it, not that 18 that's a good response, but that's some of the response I 19 got back. 20 But I'm continuing to check with my membership 21 on it, and I plan on holding a special -- actually a 22 special membership meeting to try to get more 23 owner/operators aware of the situation try to poll even 24 more, but yeah, it was interesting because they didn't 25 feel that it had necessarily declined in the way that the</p>	<p style="text-align: right;">Page 76</p> <p>1 study, discuss the format for recommendations to the 2 legislature, review of statute and groundwater study 3 proposal. Who wanted to address this issue? 4 MR. GILL: This will be real quick. 5 Basically, if you remember back, for the Policy 6 Commission to make the recommendations to the 7 legislature, we were relying on or we're to look back at 8 the statute. I found nothing in the statute. Looked 9 back at the proposal which the DEQ provided for us in 10 their packet, which I appreciate, and it says nothing. 11 So basically, I just thought that Myron might want to say 12 what we're going to do is we can all agree on it and move 13 forward because the next meeting, which is June 11th from 14 9:00 to 12:00 on the first floor of the Capitol 15 conference room is that's what it's going to be on, 16 moving forward with the groundwater study 17 recommendations. 18 MR. SMITH: You're right, Hal. There is 19 nothing written in either the statute or the groundwater 20 proposal that went out to the contractors who did the 21 work, but I think it was always understood, and correct 22 me if I'm wrong, Ian, that we were to take the summaries, 23 the findings, and make some kind of recommendations to 24 the legislature. 25 MR. BINGHAM: For the record, Ian Bingham.</p>
<p style="text-align: right;">Page 75</p> <p>1 numbers showed. So I don't know if it's just that people 2 are waiting to submit applications because there's just 3 sort of -- 4 CHAIRMAN O'HARA: I'd be interested to see 5 the trend. 6 MS. MARTINCIC: -- a feeling of malaise or 7 something. 8 CHAIRMAN O'HARA: We've received data in 9 the past that shows the number of applications per year? 10 Haven't we received something like that? 11 MS. MARTINCIC: That's what I was referring 12 to because I think we had received some graphs that 13 showed that claims that the applications had declined 14 since 2001, and my initial response, like I said, back 15 from membership is just that they're in no rush to file 16 applications for work to be repaid because they feel like 17 they're not going to get repaid. So it's like why hurry 18 up to get in line, but hopefully I think that -- I'm 19 hoping the trend is going to change because we'll see the 20 backlog moving. I just wanted to let the Commission 21 members know that I was still -- and I'm still working on 22 getting even more responses. 23 CHAIRMAN O'HARA: Thank you. Appreciate 24 that. Any comments? Questions? 25 Okay. Moving on to Item Seven, groundwater</p>	<p style="text-align: right;">Page 77</p> <p>1 My understanding of the process when we first came in is 2 we didn't want to pigeonhole ourselves into something 3 until we saw the results of the study, and when I got 4 into the award of the contract, that was really a part of 5 the discussion was let's let the study dictate what we 6 end up doing rather than giving ASU, the recipient of the 7 award, these markers, go hit this target. Go tell us 8 what is out there and allow the Commission to then take 9 that information to make educated guesses on the result, 10 and I've predetermined outcomes, and that was my 11 understanding going in. 12 MR. SMITH: So I think just in our basic 13 charge as a Commission we can take that report and their 14 findings, and as our basic charge to look at ways to 15 improve the program and appropriate use of monies and 16 et cetera, et cetera, take that and come up with 17 recommendations to the director, the legislature and the 18 governor. And even though we're not specifically charged 19 to do that, I think we'd be remiss in not doing it. 20 MR. GILL: Definitely. I know there was 21 concerns at the time is if the report was just there, it 22 could end up being taken like the Livermore report was 23 and just run with in any direction they wanted to run. 24 MR. SMITH: Right. And they would really 25 not have the expertise or the knowledge or the</p>

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1 understanding to truly understand what the report is
 2 saying, and that's what the members of this Commission
 3 are made up from is that experience, that knowledge base
 4 to take that report, come out with something that can go
 5 forward to the director, the legislature and the
 6 governor.

7 MR. GILL: Okay. Again, the next technical
 8 subcommittee is June 11th from 9:00 to 12:00, first floor
 9 conference room in the Capitol, and that's the agenda
 10 item.

11 MS. CLEMENT: Mr. Chairman, what was the
 12 cost of -- the entire total cost of that study?

13 MR. SMITH: The award was for half a
 14 million. Is Bambi still here?

15 Was the entire amount used?

16 MS. BRENDEN: Pretty much. After we had
 17 done the task assignment, in addition to that, the
 18 original award was like 337,000.

19 MR. SMITH: Right. We had held 100,000 for
 20 additional work as the study progressed and opened up new
 21 areas that we felt were needed to be addressed. We
 22 wanted to have a little bit of a cushion, plus the
 23 winning bidder came in under even holding back \$100,000.
 24 So the study did open up new areas of questions and data
 25 needs that we went through for the procurement process of

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1 MR. GILL: I would say the only thing that
 2 will probably -- well, we do have other issues in
 3 between. So we may stagger it a meeting or something
 4 like that, if there's some things that need to be
 5 discussed on the other topic.

6 CHAIRMAN O'HARA: Any other comments?
 7 Questions? Thank you.

8 Moving on to Item Eight, backlog of
 9 determinations for volunteer status, and I believe Ian
 10 Bingham's name is on this.

11 Do you want to speak to it?

12 MR. BINGHAM: For the record, Ian Bingham
 13 with ADEQ. As many of you may or may not know, the
 14 paralegal in my section left and went to the AG's office
 15 late last year. So we have not had the ability to do the
 16 legal researches necessary for ownership and volunteer
 17 determinations. We had initiated the hiring process at
 18 the end of last year. However, as most of you are aware,
 19 the State started going through some budgetary issues.
 20 The ability to hire and fill that position was not there,
 21 and over the last month and a half, we've been working
 22 with the paralegals in WQARF. Mr. McNeely has been
 23 gracious enough to allow us the use of his paralegals to
 24 assist in doing that work, and for the last month they
 25 have been engaged in doing the researches, and the AG's

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1 the state and agreed to fund additional work as it went
 2 through.

3 MS. DAVIS: Gail, you had asked for the RFP
 4 and the contract, and I want to let you know that they're
 5 exactly the same, they were a mirror.

6 MS. MARTINCIC: Mr. Chairman, do we have a
 7 time line as the Commission? I mean, I'd like to kind of
 8 know what we're looking at in terms of making
 9 recommendations on this groundwater study. I mean, can
 10 we kind of maybe discuss when we think we would be there?
 11 Are we looking to do this over the summer? Are we seeing
 12 this taking a lot of time?

13 MR. SMITH: I believe we should take
 14 between now and the end of the year to be able to present
 15 something to the 2004 legislature -- legislative session,
 16 but certainly to the director before then, a month or two
 17 before then, which would back us up to November so we can
 18 have discussions with the director on our
 19 recommendations.

20 MS. MARTINCIC: I just wanted to make sure
 21 that we were planning on getting it done in time for it
 22 to be meaningful. So this will be a topic of discussion
 23 in the technical subcommittee from now until November or
 24 whatever?

25 MR. SMITH: Yes.

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1 office has loaned us Ms. Jensen back at periods of time
 2 to assist the new paralegals in understanding, not only
 3 the UST statutes but understanding how to work through
 4 some of the hurdles that will be encountered as you're
 5 doing some of these ownership researches. So we are up
 6 and running, and hopefully can start turning out some of
 7 these determinations. And just so you know, there's
 8 currently 20 determinations that have not been made that
 9 are being worked by the paralegals and the legal
 10 assistants in WQARF.

11 CHAIRMAN O'HARA: Okay. Any other
 12 questions or comments?

13 MS. DAVIS: Mr. Chairman, also in briefing
 14 for the meeting, just to go through what they're working
 15 on in the job sharing with the superfund legal assistant.
 16 They're working seven to eight files right now. As Ian
 17 said, we have just about 20 determinations, subset of
 18 that being seven to eight, and next meeting there will
 19 also be a list of sites in the packet as a way of
 20 tracking. So we'll add that.

21 CHAIRMAN O'HARA: Any other comments or
 22 questions?

23 Great. Thank you, Ian.

24 Moving on to Item Nine. This is a topic that
 25 is new, and it wasn't on the agenda for last meeting, but

<p style="text-align: right;">Page 82</p> <p>1 I think it's an appropriate need to get it on the agenda 2 now. I understand there's going to be a new policy or 3 procedure on encumbrance of moneys from the State 4 Assurance Fund. Encumbrance, as everyone is familiar 5 with, deals with preapprovals, encumbering that money. 6 I'd like to ask Judy Navarrete to make a small 7 presentation. 8 MS. DAVIS: Mr. Chairman, if I could, I 9 want to frame this. Judy is going to dive into the 10 details here, but I want to reframe it for the Policy 11 Commission. When the new director came on, UST has been 12 at the top of his list to look at and how to reform, and 13 the two issues that he heard repeatedly, number one, is 14 the backlog, and to that end, even before Director Owens 15 coming on, we've shifted resources and continued to focus 16 on getting that backlog down in the SAF section, and you 17 can see by the stats that that's working, and the second 18 piece that he hears all the time all the way around 19 everywhere in the state is it takes so long to get our 20 money. We wait in line forever. We don't get our money. 21 So that was the second thing that he took on immediately 22 in the internal working group where we've been briefing 23 him issue by issue by issue to get him up to speed on the 24 complex UST program. 25 So his desire has been to get some of -- is</p>	<p style="text-align: right;">Page 84</p> <p>1 be helpful because I think there's been a lot of 2 information passing by word of mouth. 3 MS. DAVIS: I'll try to explain it in kind 4 of high level, if you will. When preapprovals are 5 approved, you know that amount of money is encumbered. 6 We use the term "encumbered" or we set that aside, and 7 then when the claims come through, direct pays as we call 8 them, that money is sitting there for us to be able to 9 pay them out. And there's just a lot of money sitting 10 there right now, and it sits there, and so what we have 11 looked at and Director Owens has asked us to research is 12 can we -- can we loosen up that money right now to pay 13 for some of these claims that the reimbursements that 14 need to be ranked and paid out. And with the 15 assurance -- so we're moving more on a cash basis, but 16 also with the assurance that we leave enough money in 17 reserve, and this is really critical because this is the 18 point, is that we leave enough money in the cash reserve 19 to be able to pay immediately, because we're caught up, 20 to be able to pay immediately direct claims when they 21 come in. And so part of it will be getting the balance 22 where we always have enough in that cash reserve, and 23 that's part of what Judy is preparing right now for next 24 Wednesday, but to always have those direct pays 25 available, boom, when it comes in the door. It's not</p>
<p style="text-align: right;">Page 83</p> <p>1 there any way we can pay claims faster, has been his deal 2 because that's where a lot of the noise has been and a 3 lot of the requests from the stakeholders committee. But 4 I'll kick it over to Judy to explain what's occurring but 5 I just wanted to set the framework that those are the two 6 issues the director has had his eye on since he came in. 7 MS. NAVARRETE: Judy Navarrete, for the 8 record. Yes, I have unencumbered funds in the Fund A, 9 and Fund B, and we have run a ranking, which has made 164 10 claims payable in Maricopa and 287 claims payable in 11 nonMaricopa, and I'm going to have a detailed report on 12 this at the June 4th conference, how this was done and 13 how it is affecting the fund and how we are going to run 14 the fund. So if everyone would come to that June 4th 15 conference, I'm building that show right now, and I'll 16 have a better explanation for you as to how things are 17 going to run. 18 CHAIRMAN O'HARA: Any comments or questions 19 for Judy? 20 Gail. 21 MS. CLEMENT: Maybe it would just be 22 helpful, particularly for the audience, if you could 23 explain what this is. I had the benefit of having a 24 discussion with Shannon directly, and I believe I 25 understand what you're attempting to do here, but it may</p>	<p style="text-align: right;">Page 85</p> <p>1 like we're going to have to wait for the next three or 2 four months to get moneys from the penny-a-tank fee. 3 So the desire is to be able to pay those that 4 have been standing in line longer, to get some of those 5 claims out. There's no sense in tying the money up, and 6 then also, again, to make sure that we can pay direct 7 claims when they come so. And so that's the purpose to 8 be able to continue doing what we're doing, to pay down 9 some of the reimbursement stuff, which Judy said she just 10 ranked Maricopa and nonMaricopa, and she's preparing her 11 presentation, which is being approved meticulously up on 12 the sixth floor. 13 CHAIRMAN O'HARA: Any other questions? 14 Hal. 15 MR. GILL: I guess I wonder why wasn't this 16 done before? How come we're doing it now? 17 MS. DAVIS: You know, that's a great 18 question. That is a great question. It wasn't some 19 advance science we were working on. We just didn't think 20 of it. You know, this was the way the system rolled 21 along, and I think that's the benefit of having new 22 leadership, and they look at stuff and they say, "Hey, 23 this is a problem. Isn't there something we can do with 24 it?" So it's the benefit, I think, of new leadership 25 because that's exactly why they turned to us and asked,</p>

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1 "Why can't we do this?"

2 CHAIRMAN O'HARA: Myron.

3 MR. SMITH: By paying this money out, that
4 will in turn reduce what we are in the red? I mean,
5 we're 80-some million in the hole, so now we'll be
6 reduced by that amount?

7 MS. DAVIS: Yes, yes. And the exact amount
8 Ms. Navarrete will roll out next Wednesday, I think, yes.

9 MR. GILL: Mr. Chairman, now if -- how does
10 it change the preapproval process from this point
11 forward? Do we put in contingencies and if we have
12 contingencies in there, which is basically where most of
13 encumbered funds ended up being in contingencies, will
14 there not be encumbered funds anymore?

15 MS. DAVIS: Mr. Chairman, if we could, if
16 we could save those kinds of specific questions for the
17 policy -- for the conference next Wednesday. I think
18 that would be more preferable because I think Judy is
19 working out those details into a slide that she would
20 show.

21 CHAIRMAN O'HARA: Myron.

22 MR. SMITH: It might be interesting for the
23 financial conference to look at the reduction of what we
24 are in the red and how it would be reduced, not to redo
25 the actuarial study, but maybe some of those that have

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1 CHAIRMAN OHARA: So my understanding is
2 you want the SAF to maybe have a position on that at the
3 next meeting and how they're going to treat those
4 preapprovals that have \$10 instead of 150?

5 MR. GILL: Yeah. Because my understanding
6 is it would be -- it's a substitution, but I'm
7 wondering -- I thought in one of the presentations that
8 Tara gave is that she said substitutions -- and I'm
9 wondering if a substitution like this that everybody
10 knows can just be automatically be done if the funds are
11 there, but that was part of the issue for discussion.

12 CHAIRMAN OHARA: Okay. So do you think
13 you may have a position on that by next meeting, how to
14 handle this.

15 MS. ROSIE: Yes, we'll discuss it.

16 CHAIRMAN O'HARA: Okay. We'll put that on
17 the agenda.

18 Next is a presentation by AIG regarding the
19 privatization of SAF programs, and this item was sent to
20 me via e-mail by George Tsiolis, who is on vacation, and
21 he just noted that, I guess, AIG is administering some
22 SAF assurance fund programs around the country and
23 thought it would be a good informational presentation for
24 us to have AIG here to hear what they're doing and
25 present to us.

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1 more financial knowledge than a lot of us do to look at
2 this that we are changing the way this is run, and we're
3 reducing the amount that's in the red. That should
4 change that whole time scenario, shouldn't it?

5 CHAIRMAN O'HARA: It shouldn't be a
6 permanent change. We're really talking about the timing
7 change and moving the money from sitting there that's
8 going to be used eventually. So I don't think it will
9 effect the end result of that actuarial study, but you do
10 bring up a good point that we ought to compare
11 assumptions that they used are actually turning out to be
12 true and that the amount of solvency is being reduced
13 such as the actuarial study predicted. So that's a good
14 point.

15 Any other comments? Okay. Great. Thank you.

16 Item Number Ten, discussion of agenda items for
17 the next month's Commission meeting. First item was a
18 new Arizona Department of Water Resources notice of
19 intent to drill fee.

20 MR. GILL: It went from 10 to 150, and it's
21 mostly SAF issues because there's a lot of work plans
22 with \$10 in there for the fee, and now they're 150 each.
23 So you're going from \$10 -- or \$100 to over a thousand if
24 you had ten wells. So it's just we need to discuss how
25 are we going to address those issues.

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1 MR. SMITH: Mike, I think also you need to
2 ask them to have some kind of discussion on what
3 insurance policies are doing for the owner/operators and
4 how they're -- how they have changed when there is a
5 sunset to the fund. I mean, as long as we're going to
6 have them here talking about how they have taken over SAF
7 funds and managed them for the agencies, I think we need
8 to know the other part of this, is how it's affecting the
9 owner/operator in a general sense. I'm not looking for
10 specific policy amounts and whatnot, but just general
11 sense of how things are changing.

12 MS. MARTINCIC: Well, we had also talked
13 about earlier in the meeting about financial
14 responsibility issue in terms of how that --

15 CHAIRMAN O'HARA: Okay. That's great. Any
16 other comments, questions?

17 Hal.

18 MR. GILL: Tara, just one more thing back
19 on A. The other issue with the new fee is that there's
20 language in the new rule, I guess it is, that basically
21 will not allow us to put contaminated soil back in a
22 boring. So where before -- now we have to grout the
23 entire bore. I knew there was another issue.

24 CHAIRMAN O'HARA: Okay. Any more comments
25 with regards to Item B on the AIG presentation?

<p style="text-align: right;">Page 90</p> <p>1 Okay. Item 10(c) is SAF eligibility for new 2 releases, SAF mission and purpose. Who sent that to me? 3 MS. MARTINCIC: I'm responsible for that. 4 Well, the reason I did that is I'm hearing from my 5 members a lot in terms of what is the fund for? What is 6 the mission of the fund? And in a lot of people's minds, 7 it's very simple. It's to clean up. It's to clean up 8 releases and others probably maybe have a different view, 9 and I just think it would be a valuable discussion for 10 the Commission to have since we have new members. I 11 just -- I thought it would be fun to hear everyone's idea 12 of what the mission is. 13 CHAIRMAN O'HARA: It probably goes hand in 14 hand with the phaseout discussion that we need to 15 determine what we think as a Commission of the 16 stakeholders feel going forward appropriate use of the 17 fund. So I think probably ought to take that up at that 18 time when we do a phaseout, and my understanding is the 19 director is going to have some round tables at some point 20 soon. 21 MS. MARTINCIC: I would like to see us talk 22 about it before then, so that when the round tables 23 start, the Commission can make meaningful recommendations 24 and not waste another two months of meetings trying to 25 formulate them.</p>	<p style="text-align: right;">Page 92</p> <p>1 encourage the Commission to have any subcommittees it 2 needs to have and vent out the issues because when you 3 get to the table, Steve has been studying the issue and 4 he's going to be able to roll with stuff. So, you know, 5 feel free to have your meetings and talk about purpose of 6 the fund or what you think the purpose of the fund should 7 be, if that needs to shift, if it's cleanup, cleanup for 8 everybody. More emphasis on little people or big people, 9 and the phaseout. I mean, take it up there because he'll 10 be ready to go with it. 11 CHAIRMAN O'HARA: Okay. Thank you. 12 Okay. Moving on to Item 11, general call to 13 the public. I only have one speaker slip, and it's from 14 Mr. Pearce. 15 MR. PEARCE: Thanks. I'm just pointing out 16 that I think it would be a nice idea to have AIG present 17 here, if you can arrange it, to talk on those two issues. 18 I guess they want to make a presentation. It will 19 probably be one of the brokers as well as maybe someone 20 from AIG about how they would propose to engage in the 21 privatization processes here in Arizona, which may or may 22 not be of interest. But if we want AIG to talk about 23 their perspective and their logistics associated with the 24 whole claims paying issue in connection with the 25 interpretation of the insurance companies with the State</p>
<p style="text-align: right;">Page 91</p> <p>1 CHAIRMAN O'HARA: My understanding is 2 there's no mission statement or purpose statement in the 3 legislation. I'm just wondering when they created the 4 fund what was the original purpose. 5 MS. MARTINCIC: That's why I think the 6 conversation needs to happen. 7 MS. CLEMENT: I was there. 8 CHAIRMAN O'HARA: Can you enlighten us on 9 that? 10 MS. CLEMENT: I would be happy to discuss 11 it at the next meeting in terms of my impression because 12 I was one of the people that drafted the original 13 legislation. 14 CHAIRMAN O'HARA: Great. Anybody else 15 that's in the public that has information that can help 16 us, that's great. 17 MR. GILL: Where is the phaseout? 18 CHAIRMAN O'HARA: Well, the director -- my 19 understanding is the director wants to have round table 20 discussions on the future of the fund and phaseout and 21 that we were going to as a financial subcommittee attend 22 those meetings and, you know, have additional meetings 23 possibly, but have a recommendation for the Commission. 24 Shannon. 25 MS. DAVIS: And I would just really</p>	<p style="text-align: right;">Page 93</p> <p>1 Assurance Fund, you're going to need to have a different 2 gang of people from AIG present to do that, and the 3 people that would make a presentation on privatizing, and 4 if you want to do that at the next meeting, I think 5 that's a good idea. And if you'd like for me to try and 6 introduce Mike or Shannon to the right person or persons 7 at AIG or Federated Insurance Company that might be 8 available to do that, I can do that, if you'd like me to. 9 But I guess the thing is make sure you really 10 want to do that, is that what you really want to do 11 because from their standpoint right now -- I don't want 12 to speak for them, but I know they're struggling with 13 what the Department is truly interpreting the statute to 14 mean. They know obviously where the claims are now 15 unless there's something that happens in Superior Court 16 that reverses the decision by the administrative law 17 judge that they're not going to get paid more on claims. 18 But they don't know about claims in process, but they 19 don't know about the Department's intention of going on 20 what the director's current thoughts are on that today. 21 But in addition, they're struggling with, well, 22 what is it that the Department would need from the 23 insured to show the Department that the claim has been 24 denied so that we can write those kinds of letters to 25 show that it's been denied, because we don't want to harm</p>

<p style="text-align: right;">Page 94</p> <p>1 our insured by slowing down their SAF claims from being 2 processed. So we have our processes and procedures and 3 how we write declaration letters and they're going to be 4 slow to change without knowing how, you know, because 5 they're going to continue to plod until a group of people 6 kind of say, you need to plod another way here because 7 things are changing. 8 This might be an indication of where that could 9 be accomplished, if that's what the Commission really 10 wants to do, and I think there's a possibility that we 11 could get the right people in the room that could send 12 the message to the insurance industry that this is where 13 we are right now, this is what we need to know, and maybe 14 the Commission forum is the right forum for that. I 15 don't know, but I'm just throwing that out for 16 consideration because I think it's time to start talking 17 about this stuff sooner rather than later so people know 18 what to do from the insurers' standpoint, insured 19 standpoint and the Department integrating with both of 20 those groups, but whether it should be done in the public 21 forum with everybody here now, I don't know. That might 22 be one alternative. We could do it in the financial 23 subcommittee, but to do it, I think, would be a great 24 idea. So I'll stop with my short rambling dialogue. If 25 you want to make a contact with Federated or AIG on that</p>	<p style="text-align: right;">Page 96</p> <p>1 attended since it was notified in a very short order, my 2 clientele did not receive notification. In fact, I 3 learned of it from the consultants. The conference also 4 was noticed late on the bulletin board. Having two weeks 5 notice that something is going to pop up isn't very 6 helpful. 7 CHAIRMAN O'HARA: Judy, that presentation 8 you're making at the conference, would you also do a 9 short presentation at the next meeting just for the 10 benefit of those members that aren't at the conference? 11 MS. NAVARRETE: Yes. 12 MR. VANNAIS: I have a slip in. 13 CHAIRMAN O'HARA: Go ahead. 14 MR. VANNAIS: Leon Vannais, for the record. 15 I would just like to make one recommendation for the 16 Policy Commission to consider. We have been making some 17 great progress in the technical subcommittee meetings as 18 to getting an agreement with ADEQ on some reporting 19 formats and the corrective actions required by the 20 Department under the new rule and also just as a matter 21 of policy. However, every single one of these technical 22 decisions does have implications from the State Assurance 23 Fund, and I'm not sure if those implications are being 24 collected by the people at the State Assurance Fund that 25 ultimately implement these decisions or the evaluation of</p>
<p style="text-align: right;">Page 95</p> <p>1 issue, let me know, and I can do that, but the people 2 that will be doing that would not be the same people that 3 would give their ideas on the privatization. 4 CHAIRMAN O'HARA: Great. Thank you, John. 5 Okay. One more comment. Those are two 6 distinct issues. There's an insurance issue about how 7 the funds can be treated based on the law, and then 8 there's the issue of privatization. So we may end up 9 getting more than one -- I'd like to open it up to just 10 AIG. I'm sure insurance companies are willing to come 11 and talk about how it's going to apply. 12 Mr. Beck on encumbering the fund. 13 MR. BECK: Yeah. Brian Beck. We were kind 14 of surprised about the notice or nonnotice of the 15 unencumbering funds. We think that this kind of 16 situation is a major change in policy and/or procedure 17 with the ADEQ. That should have gone out to all the 18 people on the preapproval process or have encumbered 19 funds right now, what the net effect will be, what kind 20 of kinds of delays can or may be expected, how the 21 reserve is going to work that was just alluded to and how 22 can people or how is ADEQ planning out this reserve and 23 how are they anticipating what funds will be expended on 24 whatever particular preapproval plan. Waiting until next 25 week at a conference that will probably be poorly</p>	<p style="text-align: right;">Page 97</p> <p>1 payment for certain activities. 2 There are also a number of issues that are 3 directly related to SAF policies that should also be 4 considered for a bulletin board, and at this point, there 5 doesn't seem to be a vehicle within the financial 6 subcommittee or the technical subcommittee to bring those 7 issues to light. Just for a quick example, Mr. Alspach 8 was kind enough to elaborate on the contract date as 9 associated with work plans. There is still some 10 disagreement about that that needs to be discussed in a 11 public forum, probably even before the SAF training 12 manual comes out because we recognize in the outside 13 difficulties that the Department, the people 14 administering the program, may not recognize this at all. 15 So I would hope that the Policy Commission 16 would recommend that, the technical subcommittee or in 17 some other forum, that we have a public discussion about 18 these issues that may be in dispute or uncertain before 19 the development of things like these training manuals so 20 that at least the Department can address the concerns of 21 the community within those documents themselves, and I 22 guess that would be my statement. 23 CHAIRMAN O'HARA: Any other comments? 24 Thank you. 25 Without objection, I'm going to adjourn the --</p>

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1 well, first of all, an announcement for next meeting is
2 June 25th at 9:00 a.m. in this room, and without
3 objection, I'm going to adjourn the meeting. Thank you
4 for coming. Meeting adjourned.

5 (Whereupon, the proceedings were concluded
6 at 11:39 a.m.)
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